

THE
ATTORNEY'S
Pocket Companion;

OR, A GUIDE to the
PRACTISERS of the LAW;
In two PARTS:

Being a Translation of Law Proceedings in
the COURT of Common Pleas:

Containing

A Collection of the Common FORMS, begin-
ning with the Original, and ending with the
Judicial PROCESS:

Together with

EXPLANATIONS

On the several *Œc's* made Use of in the Proceedings.

PART II.

By a Gentleman of the *Inner Temple*.

*Lex dudum pulchre sonuit Sermone Latino, -
Horrida jam patrio claudicat ista pedes,
Lingua Diferta Vale!* —————

In the SAVOY: Printed by E. and R. NUTT,
and R. GOSLING, (Assigns of E. Sayer, Esq;) for
R. GOSLING at the Crown and Mitre, over-
against Fetter-lane, Fleetstreet. 1733.

THE
OFFICE OF THE
ATTORNEY GENERAL
OF THE STATE OF NEW YORK
IN SENATE CHAMBERS
ALBANY, N. Y.
JANUARY 10, 1890

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ATTORNEY'S

POCKET COMPANION.

*Of the Returns of Writs in the
Common Pleas.*

BEFORE I proceed to the Form and Manner of the Returns, I shall here shew the Reason why I don't call the Return, *In Octabis Sancti Hillarii, in eight Days of Saint Hillary*, which is this; Because I don't see any Reason that our Laws, or the Practise of 'em, should in any one Instance, lie under the Imputation of an Absurdity, when there is no Necessity for the least Shadow of Absurdity to be thrown upon 'em, unless you will think it Necessary *errare cum patribus*.

Common
Pleas.

If I had promised to pay a Man twenty Pounds in *three Weeks of Christmas*, I dare say he'd think I broke my Word with him,

B

if

Common if I made him stay till *three Weeks after*
Pleas. *Christmas* before I paid him.

Therefore if there's no Necessity to translate it thus in order to make it a true Translation, I think I shall shew very good Authorities both from the Classics and the Law, to call *In Octabis Sancti Hillarii*, on the *Octave of Saint Hillary*, to justify this Translation.

In the first Place, the Word *Octaba* is Latin for the *Octave*, which Word signifies the ultimate Day of the *Octaves* or *eight Days of a Feast* continued for so long Time, including the festival Day, and this Feast so continued was of Popish Institution, as most, if not all our other Feasts likewise were; the Reason whereof was, as Sir *Henry Spelman* tells us, and cites very good Authorities to warrant his Assertion, That *Festival* and *fasting* Days were imposed on us by the Romish Church, and such other Provincials as were instituted by our antient Kings and Clergy, which Days were exempted from judicial Trials and Proceedings.

Hillary
Term.

Hillary Term antiently began in *Octabis Epiphaniæ*, which is the *thirteenth Day of January*, seven Days before the Return is now, and ended on the *Saturday next before Septuagesima*, which being moveable, made this Term longer some Years than others.

Easter
Term.

Easter Term, which now begins two Days after *Quindena Paschæ* began then, as the Law of *Edward the Confessor* appointed it,

at the *Octave of the Feast of Easter*, which is said by him to be verified by *Glanvill*, who makes one of his Writs returnable on that Day. But as it began then nine Days sooner than it now doth; so it ended six or seven Days sooner, (that is to say) before the *Vigil of the Ascension-Day*. Common Pleas.

Trinity Term in those Days began as it now doth (with Respect to the Time at *Octabas Pentecostes*, which being always the Day after *Trinity Sunday*, is now by the Statute of the 32d of *Henry* the Eighth, appointed to be called *Crastino Trinitatis*; and as to the Day of sitting to do Business, it was by that Statute appointed to begin for ever the *Friday* after the Day of *Corpus Christi*, and to continue nineteen Days; so that the Day of *Corpus Christi* being a moveable Feast. This Term is uncertain as to its Station in the Year, and the whole Frame of *Trinity Term* was by that Statute alter'd to what we now find it. Trinity Term.

Michaelmas Term, was by the Statute of 16 *Car. 1. cap. 6.* limited and abbreviated to what we now find it, which before began on the *Octave of St. Michael*, and two Returns were by that Statute lopped off from the Beginning of the Term, and by that Statute it is to begin on the 23d Day of *October*, unless it happens on a *Sunday*, for then it is deferred till the Day following; and this *Octabas Sci' Michaelis* is by Sir *Henry Spelman*, very truly call'd the *Octaves of St. Michael*. Michaelmas Term.

Common
Pleas.

To enter into the Reasons of the Institutions of the Terms how they came to be alter'd, and by what particular Statutes, is so accurately handled by the before mentioned Author, and is so little Necessary to my present Purpose, that I shall here omit it,

And only *In the second Place* take Notice of what Authorities I have from the Classics, to call this Return *in Octabis Sci. Hillarii*, and the rest under that Denomination, at or on the Octave of the respective Feasts.

The Signifi-
the Word
In.

The Word *In* as a *Latin* Preposition, hath been made Use of by *Plautus*, to signify upon, as in the Phrase *in re presenti*, which is translated upon the Place; but generally when it signifies upon, it is made Use of in a compositive Sense, as in the Words *irruo* to rush upon, *impono* to put upon, *invoco* to call upon; and it likewise is made Use of to signify our Word *at*, and sometimes within, as *Virgil* does in the Words *in tri-duo within three Days*, but in our Case I apprehend the Word *upon* to be the best *English*, because the Writ is supposed to be returnable upon the Octave, &c.

Of the
Word Oc-
tave.

This Word *Octave* carries with it a clear and significant Meaning, and when the Law was before in *English*, it was made Use of by *Hearne* in his Pleader, and by *Brownlow*; but sometimes they call'd the Octave of *St. Hillary*, the *Utas* of *St. Hillary*, and that Word is made use of in several Acts of Parliament, as in the Acts of 53 H. 3. Statutes 2 & 3; and if that should be esteem'd the best Expression, I have no Objection to it;

it: but to say within *Eight Days of St. Hillary*, when the Meaning and the Truth of the Return is within *Eight Days from such Feast*, will not go down as common Sense. Common Pleas.

Michaelmas Term contains five Weeks and two Days, and has six *Returns*, viz. *The Returns.*

In *three Weeks* from the Day of *St. Michael*.

In *one Month* from the Day of *St. Michael*.

On the *Morrow of All Souls*.

On the *Morrow of St. Martin*.

On the *Octave of St. Martin*.

In *fifteen Days* from the Day of *St. Martin*.

Hillary Term contains three Weeks compleat, and hath four *Returns*, viz.

On the *Octave of St. Hillary*.

In *fifteen Days* from the Day of *St. Hillary*.

On the *Morrow of the Purification of the Blessed Virgin Mary*.

On the *Octave of the Purification of the Blessed Virgin Mary*.

Easter Term consists of three Weeks and six Days, and hath five *Returns*, viz.

In *fifteen Days* from the *Feast-Day of Easter*.

Common
Pleas.

In *three Weeks* from the *Feast-Day* of *Easter*.

In *one Month* from the *Feast-Day* of *Easter*.

In *five Weeks* from the *Feast-Day* of *Easter*.

On the *Morrow* of the *Ascension* of our *Lord*.

Trinity Term wants one Day of three Weeks,
and hath four *Returns*, viz.

On the *Morrow* of the *Holy Trinity*.

On the *Octave* of the *Holy Trinity*.

In *fifteen Days* from the Day of the *Holy Trinity*.

In *three Weeks* from the Day of the *Holy Trinity*.

The ancient
Method of
suing out
Process.

The ancient Method of suing out Process, was by giving Instructions to the *Cursitor*, to make out and Seal an *Original* Issuing from the Court of *Chancery* returnable in this Court, in order to give this Court a Jurisdiction; for this Court hath no Jurisdiction but by such *Originals*, except for Persons *privileged* in the same Court; as for the *Prothonotaries*, and their *Entering Clerks* and for *Attornies*, and other *Officers* of the same, and that by immemorial Custom. This *Original* when sued out, was used to be carried to the Sheriff to have a Return made thereon, (who did it of Course) that the Defendant was not to be found in his Balywick, by which he could not be *summoned* or *attach'd*, as the Case was. And

And when this *Original* was so return'd, Common Pleas.
it used to be carried to the *Custos Brevium* of this Court, there to be filed in his Office as a Testimony, that this Court had a Jurisdiction to hold Plea of that Suit; and thereupon the *Plaintiff's* Attorney made out his Instructions to the Filazer for a *Capias* to be directed to the Sheriff, in order to have the Defendant arrested thereon.

The present Practice.

But of latter Days, the Method has usually been (to prevent Trouble, and for the Ease of the Attornies) for the Plaintiff's Attorney to make out Instructions for the *Capias*, and carry the same to the Filazer, who after having made out a Writ thereon, enters the same upon a Remembrance-Roll of that Term, and then delivers over such Instructions to the *Cursitor*, and he makes out an *Original*, and then carries them all-together back to the Filazer of the proper County, who afterwards delivers them over to the *Custos Brevium*, and he files them of the proper Terms to which they belong.

The Form of these Instructions, if the Plaintiff proceeded by Special ORIGINAL, were as follows.

Middlesex ss. Precipe C. D. nuper de Westm' *The usual*
Gen' (alias dict' if any) quod reddat A. B. 40 l. quas *Instructions*
ei debet & injuste detinet. Cap' res' Cro' Animar'. *ons heretofore used.*

If it was an *Acetiam Writ* for a Debt, not by Special *Original*, or in *Trespas* or *Trespass* *Acetiam.*
B 4 *pass*

Common Pleas. *pass upon the Case*, then the Instructions were in the following Manner.

The usual Instructions for a Capias ret. Cro. Animarum. Middlesex, ff. Si A. B. fec' &c. pone, &c. C. D. nuper de Islington in Com' tuo Gen' Acetiam in debito pro 40 l. or, Acetiam in Casu sup' assumptiones, &c. pro 20 l. as the Case was.

J. Cock.

But to avoid the *Fine* that is due upon a *Special Original*, the common Practice was to make out Instructions for a common *clausum fregit*, with an *Acetiam* for so much as the Debt was, which now by Means of the following Rule, supplies the Place of a *Special Original*.

For heretofore on every common *Clausum fregit*, and *Acetiam* thereon, the Defendant was intitled to an Imparlance, (that is) to plead of another Term, than that in which the Declaration was delivered; but now it may be observed by this Rule, that Imparlances are take away.

Mich. the Third of King George the Second.

A Rule of Court.

It is ordered, that upon all Process sued out of this Court, returnable the first or second Return of any Term, if the Plaintiff declares in London or Middlesex, and the Defendant lives within twenty Miles of London, the Defendant shall plead within four Day saster such Declaration delivered, without any Imparlance, and such Declaration

ration may be delivered de bene esse, and in Case the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from London, the Defendant shall plead within eight Days after the Declaration delivered without any Impar lance, and in Default of pleading as aforesaid, the Plaintiff may sign his Judgment.

Common
Pleas.

And it is still very proper to avoid Confusion, that the Instructions for Common Writs and Special Writs, should be Variant and Distinct; as for Example:

Instructions for a Special Writ in Debt,

Devonshire. Command A. B. late of South-Molton in your County, that he render to C. D. ten Pounds, which he owes to, and unjustly detains from him.

*Returnable in three Weeks
from the Day of St. Michael.*

J. Cock:

If more Defendants than one are in the Writ, then it must be in this Manner.

Devonshire. Command A. B. late of South-Molton in your County, Gent. that he render to C. D. ten Pounds, and command E. T. late of the same Place, Gent. that he render to C. D. twenty Pounds, which they severally owe to, and unjustly detain from him.

*Returnable on the
Ostave of St. Hillary.*

J. Cock.

As to the Instructions for a Common Writ, with an *Acetiam* thereto, if literally

Common Pleas. translated, according to the Form heretofore used, it is thus.

Devonshire. If *A. B.* makes you secure in prosecuting his Claim, then by Pledges and sufficient Sureties, compel *C. D.* of *Barnstable* in your County, Gent. to answer to the said *A. B.* in a Plea of Trespass; and also to the said *A.* of a Plea of Trespass upon the Case, upon Promises and Undertakings, for twenty Pounds.

*Returnable in three Weeks,
from the Day of St. Michael.*

J. Cock.

But as Tempora mutantur & nos mutamur in illis, if it should be thought better that the ancient Forms as to the Instructions for Writs may be altered, I submit whether the Instructions for a Common Writ may not be thus.

Devonshire. *A. B.* against *C. D.* of *Barnstable* in the said County, Gent. of a Plea of Trespass; and also in a Plea of Trespass on the Case, on several Promises and Undertakings, for twenty Pounds.

*Returnable in three
Weeks, from the Day
of St. Michael.*

J. Cock.

If it be against several Defendants, and there are several Accetiams, then say,

And also against A. B. of a Plea of Trespass on the Case, for twenty Pounds, on several Promises and Undertakings. And against the said C. D. of a Plea of Debt of twenty Pounds upon Bond (or for Money borrowed) or for Rent, as the Case is.

The

Common
Pleas.*The Form of a Capias in Debt.*

GEORGE the second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, *To the Sheriff of Norfolk, Greeting.* We command you that you take C. D. late of *Thetford*, in your County, *Gent.* and E. F. late of T. in your County, *Yeoman*, if they are to be found in your Bailiwick, and safely keep them, so that you have their Bodies before our Justices at *Westminster, on the Morrow of all Souls*, to answer to A. B. of a Plea that he render to him fifty Pounds, which he owes to, and unjustly detains from him, and have you there this Writ. Witness Sir Robert Eyre Knight, at *Westminster*, the Twenty-eighth Day of *June*, in the sixth Year of our Reign.

If the Writ be in Trespass.

Then you say, in a Plea, wherefore with Force *Trespass.* and Arms they broke the Close of the said A. and did other Wrongs to him, to the great Damage of the said A. and against our Peace.

And if in *Case.* And also to answer the said A. *Case.* according to the Custom of our Court of *Common Bench*, in a Plea of *Trespass on the Case*, upon Promises and Undertakings, to the Damage of the said A. twenty Pounds.

And if the *Acetiam* be only against one of the Defendants, then you say thus,

And also that the said C. shall answer to the said A. according to the Custom of our Court of *Common Bench*, in a Plea of *Trespass on the Case*, upon Promises *Acetiam against two.*

Common Pleas. Promises and Undertakings, to the Damage of the said *A.* twenty Pounds.

If there are several Acetiams of different Natures against several Defendants, then thus,

And also severally to answer *C. D.* according to the Custom of our Court of Common Bench (that is to say) the said *C. D.* in a certain Plea of *Trespass on the Case*, upon Promises and Undertakings, to the Damage of the said *A.* twenty Pounds; And the said *E.* in a certain Plea of *Debt* for fifty Pounds upon Demand; and have you there, &c.

If it be in Assault and Battery, say thus.

And also to answer *C. D.* according to the Custom of our Court of Common Bench, in a Plea of *Trespass and Assault*.

The Form of a special Original.

GEORGE the Second, King of Great Britain, France, and Ireland, Defender of the Faith, and so forth, To the Sheriff of Devonshire, Greeting. If *A. B.* makes you secure in prosecuting his Claim, then put *C. D.* of *Barnstable* in your County, Gent. to find Pledges and sufficient Sureties that he be before our Justices at *Westminster*, on the Morrow of *All-Souls*, to answer to *A. B.* of a Plea, that whereas the said *C.* on the first Day of *May*, in the Year of our Lord 1731, at *Barnstable* afore-said, in your County, was indebted to the said *A.* (and then recite the Declaration to the Words) to the Damage of the said *A.* one Hundred Pounds, and then go on, And have you there the Names of the Pledges, and this Writ. Witness our Self at *Westminster*,

ster, the 23d Day of *October*, in the sixth Year of our Reign. Common Pleas.

The Form of a Special Capias differs not from a Common Capias, only in the Recital of the Declaration; so that instead of the Words, of a Plea, wherefore with Force and Arms he broke the Close of the Plaintiff, you say,

Of a Plea, that whereas on the first Day of *May*, in the Year of our Lord 1731, the said *C.* was indebted to the said *A.* in the Sum of ten Pounds, for the like Sum lent by the said *A.* to the said *C.* at his special Instance and Request: And being so indebted, the said *C.* in Consideration thereof, afterwards (that is to say) on the said *first Day of May*, in the said Year of our Lord 1731, at *Barnstable* aforesaid, in the said County, undertook, and then and there faithfully promised the said *A.* that he the said *C.* would well and truly content and pay him the said *A.* the said ten Pounds, whenever after he the said *C.* should be thereto required. Nevertheless the said *C.* not regarding his said Promise and Undertaking, made in the Manner as above, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *A.* in this Particular, hath not paid him the said *A.* the said Sum of ten Pounds, or in any wise made him Satisfaction for the same (although the said *C.* on the said first Day of *May*, in the said Year, and often afterwards at *Barnstable* aforesaid, was by the said *A.* thereto required,) but hitherto altogether hath, and still doth refuse to pay, or make him any Satisfaction for the same, to the Damage of the said *A.* twenty Pounds, as it is said. And have you there this Writ. Witness Sir *Robert Eyre*, Knight, at *Westminster*, the 23d Day of *October*, in the sixth Year of our Reign.

J. Cock.
If

Common
Pleas.

If the Defendant lives in the Country ; as for Instance in *Suffolk*, and the Cause of Action arises in *London*, and therefore you would try the Cause there, then you must make out a *Testatum* into the County where the Party lives, by which it is suggested, that a *Capias* had before been taken out in *London*, and that the Sheriffs of *London* had made a Return thereto, that the *Defendant* was not to be found in their Baliwick, and that it was sufficiently testified, that the *Defendant* lurked, and wandered up and down in the County of *Suffolk*, so that when the *Defendant* is taken, he is to put in Bail with the Filazer of *London*, to answer to the *Plaintiff* upon the Writ made out there, and not in the County where the *Defendant* is taken ; and therefore the *Defendant's* Attorney in such Case must be wary of this ; for I my self know an Instance where a *Capias* was taken out, directed to the Sheriffs of *London*, and a *Testatum* issued upon that Writ, directed to the Sheriff of *Suffolk*, upon which the *Defendant* was arrested, and the *Defendant's* Attorney caused the Bail-piece to be filed with the Sheriff of *Suffolk* in due Time, but the *Plaintiff's* Attorney took no Notice of that Bail (nor am I certain whether he knew of it) for the proper Office where he searched, and where the Bail-piece should have been filed, was with the Filazer of *London* ; the *Plaintiff's* Attorney got the Bail-Bond assigned to the *Plaintiff*, and proceeded thereon, and the *Plaintiff* being delayed of a Trial, the Bail

Bail could never be let in to plead in the Original Action; but the *Plaintiff* got Judgment upon the Bail-Bond, and the Bail were forced to pay the Money, and as I remember, the Debt was two Hundred and odd Pounds, and what was a greater Hardship in this Case, the *Defendant* was a Bankrupt, and they intended to plead his Certificate; and this was the Case of *Stevens* and *Coxedge* in *Mich.* the Second of his present Majesty.

Common
Pleas.

The Form of a *Testatum* is as follows.

George the Second, &c. going quite through the *Actiam*, till you come to the Words, to the Damage of the said *A.* twenty Pounds; then you go on thus; and whereof our Sheriff of Suffolk hath made a Return to our Justices at Westminster, at a certain Day now past, that the said *C.* is not to be found in his Bailiwick; whereas it is testified in our same Court, that the said *C.* lurks and wanders up and down in your County; and have you there this Writ, Witness, &c.

If the *Defendant* lived within a Liberty, which the Sheriff could not enter, the ancient Method of proceeding was; the Sheriff, upon the *Capias* directed to him, made a Mandate to the *Bailiff* of the *Liberty* where the *Defendant* was; and if the *Defendant* was not taken upon that Mandate, the Sheriff made a Return upon the *Capias* directed to him, that the *Defendant* was in such a Liberty, to the *Bailiff* of which he had made a Mandate to take the *Defendant*,

Common
Pleas.

dant, and that the *Bailiff* had given him no manner of Answer thereto; upon which his Majesty's Writ, called a *Non Omittas*, issued, by which the King commands the Sheriff not to pass by, but to enter into such Liberty, and take the *Defendant*, so that he might have his Body at the Day of the Return; but the Method for Expedition's sake now is to make out a Writ of *Non omittas* at once suggesting this Matter; so the *Capias* and *Non omittas* are made out at the same Time, and you return the *Capias* your self.

The Form of which Non omittas is as follows.

George the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth, To the Sheriff of Suffolk, Greeting. We command you, that you do not pass by the Liberty of St. Ibbelthred in your County, but that you enter therein, and take C. D. late of Thetford in the County of Norfolk, if he is to be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at Westminster, on the Morrow of all Souls, to answer A. B. of a Plea, wherefore with Force and Arms he broke the Close of the said A. at Thetford, and did other Wrongs to the said A. to his great Damage, and against our Peace; and also to answer the said A. B. according to the Custom of our Court of Common Bench, in a Plea of *Trespass on the Case*, for Promises and Undertakings unperformed by the said C. to the Damage of the said A. twenty Pounds; and inasmuch as you have made a Return to our Justices at Westminster, at a certain Day now past, that the Bailiff of the said Liberty (to whom, by Virtue of our Writ to you directed, you had

had by your Mandate commanded, that he should take the said C.) had given you no Answer thereto; and have you there this Writ. Witness Sir Robert Eyre, Knight, at Westminster, the 23d Day of October, in the sixth Year of our Reign.

Common
Pleas.

The Manner of putting in Bail in the Common Pleas in London or Middlesex, is not by filing a Bail-Piece, but it is done by an Entry in the Filazer's Book; tho' the Filazers vary a little in the Manner thereof; but in London the Manner of the Entry is thus.

London. *Capias Johannem Doe nuper de London, Yeoman, rei' xv. Paschæ Ric'o Roe.*

Manucept. Johannes Denn de Breadstreet London, Turner.

Ricardus Fenn de Friday-street London, Packer.

Def. Manucepit in Ducentis libris.

Uterque manuctorum in Centum libris.

*Peter Burton Attorn. pro
Defend.*

But now it is to be in English, I submit this Method to the Consideration of those concerned therien.

London. On a *Capias* returnable on the Oflave of The Entry St. Hillary, against John Doe, late of London Mercer, of the at the Suit of Richard Roe, the Bail are,

John Denn of Breadstreet London, Hosier, Note of the Bail.

and

Richard Fenn of Queenhithe London, Mealfactor.

The

Common
Pleas.

The Defendant becomes Bound for himself in two hundred Pounds, each of the Bail in one hundred Pounds.

George Woodcraft Attorney
for the Defendant.

Taken and acknowledged
(to be perfected here-
after) the 18th Day of
December, 1732, before

R. Price.

So that you call upon the *Filazer*, and give him Notice when the *Bail* are ready, and he attends with you at the Judge's Chamber, and there the *Bail* enter into a Recognizance, and all the Note or Entry made of it is, that before mentioned, made in the *Filazer's* Book ; but if *Nultiel Record* be pleaded in an Action of *Debt*, or to a *Scire Facias* on that Recognizance ; then the *Filazer* draws you up a Form of the Entry of the Recognizance, which you make Use of to verify the Record ; and the Condition of the said Recognizance is as follows.

You (naming the Defendant if present) do acknowledge to owe unto the Plaintiff twenty Pounds, and you (naming the Bail) do severally acknowledge to owe unto the same Person, the Sum of ten Pounds apiece, to be levied upon your several Goods and Chattles, Lands and Tenements, upon Condition, that if the Defendant be condemned in the said Action, he shall pay the Condemnation Money, or render himself a Prisoner into the Fleet for the same ; and if he fail so to do, you (naming the Bail) do undertake to do it for them.

Con-

Concerning Bails to be taken in the Country, the following Rule was made. Common Pleas.

Termino Pasch. 5 Gul. & Mariæ.

ORDERS to be observed by Commissioners impowered by Commission, in Pursuance of an Act of Parliament, for taking Special Bail in the Country upon Actions and Suits depending, or to be depending, in his Majesty's Court of Common Pleas at Westminster.

First, It is ordered, That before any Bail be taken by Virtue of the said Act, a true Copy of the Writ on Parchment, to which the Defendant is to put in Bail, shall be brought to the Commissioner before whom such Bail is to be taken; and thereupon the Recognizance or Bail-piece, shall be fairly drawn and engrossed on the said Parchment Copy, in this or the like Form, as the Case shall be, (*viz.*)

A. B. Attorn'
pro defend'

Manuaptores Johan-
nes Denn de Black-
barnesly in Paroch' de
Settle in Com' E. Gen'
& Rich'us Fenn de
eadem Gen'.

Capr' & cognit' decimo
die Martii Anno
Dom' 1720. de bene
esse coram me A. B.
un' Commissioner'.

Pars ipsa in
20l. uterque
M. in 10l.

IF

Common
Pleas.

If the Defendant be not present, then the Bail are usually bound in double the Sum in the Writ, otherwise only single.

The Condition of which said Recognizance shall be to this Effect, *viz.*

You [naming the Defendant, if present] *do acknowledge, &c. as before.*

Secondly, It is ordered, That the Affidavit of the due Taking of every such Bail, shall be made either before some Judge of the Common Pleas, to whom the Bail shall be transmitted, or before some Person who shall have Power to take Affidavits in Matters and Causes depending in the said Court.

*Bail taken
within forty
Miles of
London,
transmitted
in ten Days.*

Thirdly, It is ordered, That all Bails taken by any Commissioner within the Distance of forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the Court of Common Pleas, or to one of the Justices of the said Court, within Ten Days after the Taking thereof; and all Bails taken by any Commissioner above the Distance of forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within twenty Days after the Taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any of them shall be returned to *London* out of his Circuit.

*If above
forty Miles,
in twenty
Days.*

Fourthly, Also every Commissioner is to have a Book kept purposely for entring exactly

actly the Names of the Defendant and his Common Bail, and of the Plaintiff, as it is in the Pleas. Bail-Piece, and the Time of the Taking thereof, and the Name of him by whom such Bail shall be transmitted.

Fifthly, It is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the End that they may enquire of the Sufficiency of them; and if they are found insufficient, they may except against them within twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney of the Taking thereof: And in that Case the Defendant must either put in better Bail, or the Cognizors of such Bail must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

*Plaintiff
may except
against
Bail with-
in twenty
Days after.*

*Geo. Treby.
Edw. Nevill.
John Powel.
Tho. Rokeby.*

By a Rule made *Hill. 6 Georgii*, It is further ordered, That all Bail-Pieces, taken within such respective Distance, as is above directed, shall be transmitted within the Time above limited, and after such Trans- *Bail-piece* mission, shall be forthwith deliver'd to, *to be filed.* and filed with the proper Officer, to be entered

Common Pleas. tered upon Record, or otherwise it shall be as no Bail; and the Plaintiff is at Liberty to proceed on the Sheriff's Bail-Bond, as if no such Bail were ever put in. And the Defendant, in Case he be admiffable to plead to the original Action, shall not be admitted fo to do, unless he first pay the full Costs to the Plaintiff for the Prosecution on the Bail-Bond; and plead as of the Time when the Bail should have been duly entered.

If the Defendant does not put in special Bail (when required by these Rules) you may get the Sheriff to assign over his Bond, and take out the *Capias* upon it, a Copy of which you personally serve on the Defendants.

The Form of an Entry of a Recognizance of Bail in Case.

Middlesex. The Sheriff was commanded that he should take *Martha Lundie*, late of *Westminster*, in your County, *Widow*, if she could have been found in your Baliwick; and that he should have kept her safely, so that he might have had her Body at this Day, (that is to say) *on the Morrow of All-Souls*, to answer *Robert Petre* of a Plea, wherefore she broke the Close of the said *Robert*, with Force and Arms, and did other Wrongs to the said *Robert*, to his great Damage, and against the Peace of our Sovereign Lord the King; and also in a Plea of *Trespass upon the Case*, on Promises unperform'd, to the Damage of the said *Robert* thirty Pounds. And now here at this Day, *Joseph Summers* of *Yorkstreet* in *Covent-Garden*, in the said County, Gentleman, and *Alicia Arthur* of *St. James's Street*, in the said County *Spinster*, come in their Persons before

Sir Robert Eyre, Knight, and his Companions Justices of this Court of *Common Bench*: And they and each of them acknowledge themselves to owe to the said *Robert* the Sum of thirty Pounds; which said Sum they the said *Joseph* and *Alicia* do, and each of them doth will and grant, for them and their Heirs, to be made and levied of their, and each of their Lands and Chattles, to the Use and Behoof of the said *Robert*; and also at the same Day, the said *Martha* comes in her proper Person before the same Justices, and acknowledges to owe to the said *Robert* the Sum of sixty Pounds; which said Sum of sixty Pounds the said *Martha*, for herself and her Heirs, doth will and grant for herself and her Heirs, to be made and levied of her Lands and Chatties, to the Use and Behoof of the said *Robert*, *subject* to this Condition, that if Judgment should happen to be given in the same Court here, for the said *Robert*, against the said *Martha*, in a certain Plea of *Trespas upon the Case*; then the said *Martha* shall make Satisfaction to the said *Robert*, for all such Damages which shall be awarded to the said *Robert* in the same Court here against the said *Martha*, or will render her Body, in Execution of the said Judgment, to the Prison of the Fleet, and so forth.

Common
Pleas.

Rules

Common
Pleas.

*Rules and Orders lately made concerning
Bails.*

Communi Banco.

*Trinity Term, the 3d and 4th of King
George the Second.*

*Special
Bail to be
perfected 4
Days after
Exception.*

I*T is Ordered*, That from and after the last Day of this present Term, if special Bail put in by the Defendant, be excepted to, the Defendant shall perfect his Bail within four Days after such Exception taken, in Default whereof the Plaintiff may proceed upon the Bail-Bond.

Per Cur'.

Communi Banco.

*Michaelmas Term, in the 6th Year of the
Reign of our Sovereign Lord King George
the Second.*

*Bail taken
by Com-
missioners
to be trans-
mitted in
10 Days,
if within
40 Miles of
London,
and 20
Days if a-
bove.*

I. **W**Hereas, by a Rule of this Court, made in *Hillary Term* in the sixth Year of the Reign of the late King *George the First*, It was among other Things Ordered, That all Bails taken by Commissioners, pursuant to the late Act of Parliament, for taking special Bails in the Country, should be transmitted to the Lord Chief Justice, or to one of the Justices of this Court, *viz.* Every Bail taken within 40 Miles of *London*, within 10 Days after the Caption thereof, and every Bail taken above 40 Miles from *London*, within 20 Days af-

ter the Caption thereof, unless all the Ju- Common
 stices should be in their Circuits, and then Pleas.
 as soon as any one of them should be re-
 turned out of his Circuit, and after such
 Transmision, should be forthwith delivered
 to, and filed with the proper Officer to be
 entred upon Record ; or otherwise it should
 be as no Bail ; and the Plaintiff at Liberty
 to proceed on the Sheriff's Bond, as if no
 such Bail were ever put in. And whereas
 the said Rule hath proved ineffectual, and
 several Abuses are daily committed by
 Defendants Attornies suppressing such Bails,
 or neglecting to file the same by the Time
 limited in the said Rule, to the manifest
 Wrong and Injury of the Plaintiffs in such *Otherwise*
 Actions, and in Contempt of this Court ; *shall not be*
 now for the remedying thereof, *It is Or- received or*
dered, That from and after the last Day *filed with-*
 of this present *Michaelmas* Term, all Bails *out leave of*
 taken before any Commissioner in the Coun- *the Court.*
 try shall be transmitted and filed with the
 proper Officer, according to the said Rule,
 and that no such Bail shall be received or
 filed, unless the same be transmitted with-
 in the respective Times appointed by the
 said Rule, without Leave of this Court first
 had and obtained.

'Per Cur'.

Common
Pleas.

Communi Banco.

The same Term.

*Tho' the
Bail taken
by the Sher-
riff be put
in above,
yet they
may be ex-
cepted a-
gainst.*

2. **W**Hereas it has been usually practised in this Court in all Cases where Bail-Bonds have been taken, that if the same Bail taken by the Sheriff be put in above, that such Bail shall not be excepted against, but shall stand good and absolute; and whereas such Practice hath been found to be Inconvenient in many Instances, *It is therefore Ordered* by the Lord Chief Justice, and the rest of the Justices of this Court, that from and after the last Day of this present Term in all Cases wherein Bail-Bonds shall be taken, and the same Bail is put in above, the Plaintiff may except against such Bail.

Per Cur'.

Communi Banco.

The same Term.

*No Attor-
ney to be
Bail.*

3. **I**t is Ordered by the Lord Chief Justice, and the rest of the Justices of this Court, That from and after the last Day of this Term no Attorney of this or any other Court, or any Person practising as such, shall be Bail in any Suit or Action depending in this Court.

Per Cur'.

Communi

Communi Banco.

Common
Pleas.*The same Term.*

4. **W**Hereas the Rule made in *Trinity* Term, in the Third and Fourth Years of his present Majesty's Reign, for obliging Defendants to perfect their special Bail within four Days after Exception taken, has answered the Ends for which it was made; but no Provision has yet been made, touching Bail put in on Writs of Error: *It is therefore Ordered*, That in all Cases where Bail shall be filed on Writs of Error, such Bail shall likewise be perfected within four Days after Exception taken thereto, or in Default thereof the Clerk of the Errors of this Court shall *Non-Pros* such Writ of Error.

*Bail on
Writs of
Error to be
perfected in
4 Days.*

Per Cur'.

Communi Banco.

The same Term.

1. **W**Hereas many Inconveniencies happen in Causes depending in this Court, by reason that Sheriffs Officers, Bailiffs, and other Persons concerned in the Execution of Process, offer themselves, and are permitted to be Bail in many Actions, and for great Sums of Money; now for Prevention of the like Mischief and Inconveniencies for the future; *It is Ordered* by the Lord

*No Bailiff,
&c. shall
be Bail in
any Action.*

Common
Pleas.

Chief Justice, and the rest of the Justices of this Court, that from and after the last Day of this present Term, no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process shall be permitted or suffered to become Bail in any Action or Suit depending in this Court.

Per Cur.

It will not be thought, I hope, unnecessary before I proceed, to insert Precedents for Declarations, to take Notice of the Alteration the Law has received by several Acts of Parliament, and the Practise thereof as to this Court, by several Rules of Court made for that Purpose.

By the Act of the 12th of the late King George, Entitled, *An Act to prevent frivolous and vexatious Suits*; ' none are to be held to Bail in a Superior Court under ten Pounds, nor in an Inferiour Court under forty Shillings; but the Defendant is ' only to be served with a Copy of the Process, ' and on his not appearing thereto, within four ' Days after such Return, the Plaintiff's Attorney ' may enter a Common Appearance, or file Common Bail for him, and proceed thereon, as if such Defendant had entred a Common Appearance, ' or filed Common Bail.

' And where the Cause of Action amounts to the ' Sum of Ten Pounds or forty Shillings respectively, ' Affidavit shall be made of, and filed, of such Cause ' of Action, and the Sum specified in such Affidavit, is to be indorsed on the Back of such written ' Process, for which Sum the Sheriff, or other Officer, to whom such Writ or Process shall be directed

' rected

rected shall take Bail, and for no more; and Common
where the Sum is not indorfed, the Party shall be Pleas.
served with a Copy of the Procefs only.

‘ And no *Habeas Corpus* is to be where the Ac- Habeas
tion does not exceed the Sum of five Pounds, tho’ Corpus.
there may be other Actions against the same De-
fendant for more.’

By an Act of the 5th of King *George* the Second,
it is enacted, ‘ That after the End of this Session of
Parliament, in all Cafes where the Cause of Ac-
tion shall not amount to the Sum of ten Pounds
or upwards in any Inferiour Court, the Writ,
Procefs, Declaration, and all other Proceedings,
shall be in the *English* Tongue, and Written in
Words at Length in a common legible Hand; and
the Defendant in fuch Cafes (a Copy of fuch Pro-
cefs in *English* having been ferved, as by the faid
Act is directed,) shall appear at the Return there-
of, or within eight Days after fuch Return; and
the Affidavit of the Service of fuch Procefs may
be made before any Judge or Commissioner of the
Court, out of which fuch Procefs shall ifsue, autho-
rized to take Affidavits in fuch Courts, or before the
proper Officer, for entring common Appearances
in fuch Courts, or his lawful Deputy, and the Af-
fidavit shall be filed *Gratis*.

‘ No Attorney, Bailiff, or other Perfon, shall
take or demand more than five Shillings, for
making and ferving a Copy of fuch Procefs out of
any Superiour Court, or more than one Shilling
out of an Inferiour Court.

‘ In particular Franchifes and Jurifdictions, the
proper Officer there shall execute fuch Procefs.

‘ Upon every Copy of fuch Procefs shall be writ-
ten in like Manner an *English* Notice to fuch
Defendant, of the Intent of fuch Service to the
Effect following, (that is to fay) *A. B. you are
ferved with this Procefs to the Intent, that you may*

Common Pleas. by your Attorney appear in his Majesty's Court of
at the Return thereof being the

Day of in order to your Defence in
this Action; and for which said *English* Notice,
' no Fee or Reward shall be demanded or taken.

' After the End of this present Session of Par-
liament, where the Cause of Action shall not a-
mount to ten Pounds or upwards, in any *Superiour Court*, or to forty Shillings or upwards in
any *Inferiour Court*, no special Writ, nor any Process,
specially therein expressing the Cause of Action,
shall be sued forth, in order to compel any Per-
son to appear thereon in such Court; and all
Proceedings and Judgments that shall after the
End of this Session be had on such Writ or Pro-
cess, shall be void, and of none effect. And
every Attorney or Officer of such Court, suing
or issuing such Writ or Process, shall forfeit ten
Pounds to the Person aggrieved thereby, who
may recover the same by Action of Debt,
Bill, Plaint, or Information in any Court of
Record at *Westminster* with full Costs of Suit,
and no Essoin, Protection, or Wager of Law, or
more than one Imparlance shall be allowed.
The said Act, except wherein the same is here-
by explained and amended, shall be continued
together with this Act, from the End of this
Session of Parliament for seven Years, and from
thence to the End of the then next Session of
Parliament, and no longer.'

Note; Long before this Act of Parlia-
ment, the Judges of this Court had already
provided against that Mischief, for which
the Remedy was intended in that Clause
where no special Writs are to be sued out
for Sums under ten Pounds, by a Rule for
more

more Extensive, and providing a far better Remedy for the Benefit of the Subject, than this Clause, which is as follows.

Common
Pleas.

Mich. tertio Georgii Secundi Regis.

I*t is Ordered*, That upon all Proceſs ſued out of this Court, returnable the *first or ſecond Return* of any Term, if the *Plaintiff* declares in *London* or *Middleſex*, and the *Defendant* lives within twenty Miles of *London*, the *Defendant* ſhall plead within four Days after ſuch Declaration delivered, without any Impar lance ; and ſuch Declaration may be delivered *de bene eſſe*, and in Caſe the *Plaintiff* declares in any other County, or the *Defendant* lives above twenty Miles from *London*, the *Defendant* ſhall plead within *eight Days* after the Declaration delivered, without any Impar lance ; and in Default of pleading, as aforeſaid, the *Plaintiff* may ſign his Judgment.

R. Eyre.

Ro. Price.

Alex. Denton.

J. Forteſcue A.

Common
Pleas.

Another Rule made concerning Declarations is as follows.

Paschæ tertio Georgii Secundi Regis.

I*T is Ordered, That all Declarations in London or Middlesex, delivered pursuant to the Rule of this Court made the last Day of Michaelmas Term, on Process returnable the first or second Returns of any Term, where the Defendant lives within twenty Miles of London, shall be delivered with Notice, that the Defendant or Defendants plead to such Action within four Days after such Declaration deliver'd, and that all Declarations where the Plaintiff declares in any other County, or the Defendant lives above 20 Miles from London, such Declaration shall be deliver'd, with Notice to plead, within eight Days after such Declaration deliver'd; the Rule made in Michaelmas Term in the first Year of the Reign of his present Majesty, to establish the Practise of the Court upon the late Act of Parliament to the Contrary, notwithstanding.*

R. Eyre.

Ro. Price.

Alex. Denton.

J. Fortescue A.

The Rule of Court of Michaelmas Term the first Year of the late King, to which the last mention'd Rule refers, is as follows.

Termino

*Termino Sancti Michaelis Anno Primo
Georgii Secundi Regis.*

‘ TO establish the Practice of this Court
 ‘ upon the late Act of Parliament, for
 ‘ preventing frivolous and vexatious Arrests,
 ‘ *It is Ordered*, That from and after the
 ‘ last Day of this present Term, in all Causes
 ‘ where a Copy of the Process of this Court
 ‘ is served upon any *Defendant*, or *Defen-*
 ‘ *dants*, and an Appearance is entered for
 ‘ such *Defendant*, or *Defendants*, by the
 ‘ *Plaintiff’s* Attorney, pursuant to the said
 ‘ Act, the *Plaintiff’s* Attorney in such Case,
 ‘ shall leave a Copy of the *Declaration* in
 ‘ the Office, and likewise give Notice there-
 ‘ of to the *Defendant*, or *Defendants*, by
 ‘ delivering an *English* Notice, written in
 ‘ Secretary Hand, to such *Defendant*, or
 ‘ *Defendants*, or leaving the same at the
 ‘ last, or most usual Place of Abode of such
 ‘ *Defendant*, or *Defendants*, signifying the
 ‘ Nature of the Action, at whose Suit it is
 ‘ prosecuted, and in whose Office such *De-*
 ‘ *claration* is left: And that in Case of *spe-*
 ‘ *cial Writs*, returnable the *first* *Re-*
 ‘ *turns* of *Hillary* and *Trinity* Terms, and
 ‘ the *first* and *second* Returns in *Easter* and
 ‘ *Michaelmas* Terms, such *Defendant*, or
 ‘ *Defendants* should take Notice, that un-
 ‘ less such *Defendant* or *Defendants* plead
 ‘ to such Action within four Days after the
 ‘ Appearance Day of the *Return* of such
 ‘ *Writ*;

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Pleas.

‘ Writ : And in Case of a *common Capias*,
‘ or any other *special Writ*, within the first
‘ *four Days* of the next Term, Judgment
‘ will be entred against such *Defendant* or
‘ *Defendants* by Default. And from the
‘ Time of giving such Notice as aforesaid,
‘ such *Declaration* shall be deemed well
‘ deliver’d to such *Defendant* or *Defen-*
‘ *dants*, and not otherwise.

‘ And in case such *Defendant*, or *Defen-*
‘ *dants*, after such Notice given, does not
‘ plead by the Time the Rules for pleading
‘ are out, the Plaintiff in such Case may
‘ sign his Judgment, (*a Rule to plead being*
‘ *first given*) without any other or further
‘ calling for a Plea, and thereon give No-
‘ tice of executing his Writ of *Inquiry*,
‘ either by delivering Notice in Writing
‘ to such *Defendant*, or *Defendants*, or by
‘ leaving the same at the last or most usual
‘ Place of Abode of such *Defendant*, or
‘ *Defendants*; which shall be a sufficient
‘ Notice to such *Defendant* or *Defendants*,
‘ of the Time of executing such Writ of
‘ *Inquiry*.

‘ *And it is further Ordered*, That from
‘ and after the last Day of this present
‘ Term, the Rule made the last *Trinity*
‘ Term, to establish the Practice of the
‘ Court upon the said late Act of Parliament,
‘ shall be discharged.’

R. Eyre.
Rob. Price.
Alex. Denton.
S. Cowper.

Left

Lest I should be condemned for a needless Repetition, I have omitted to insert the *Declarations* on *common Assumpsits*, because I have before inserted them among the Proceedings in the King's Bench, and the Alteration is no more than in this Manner.

Common
Pleas.

Declarations in Case.

L Ondon ——— *A. B.* late of the Parish of St. Michael Queenhithe, London, was attach'd to answer to *C. D.* of a Plea of Trespass upon the Case, and so forth; and the said *C.* by *John Cock*, his Attorney, complains, that whereas the said *A.* on the tenth Day of March, in the Year of our Lord One thousand seven hundred and thirty-one, at the Parish of St. Mary le Bow, in the Ward of Cheap, London, made a certain promissory Note in Writing, and subscribed his Handwriting thereto, and deliver'd the same to the said *C.* by which he promised to pay to the said *C.* or to his Order, Twenty Pounds of lawful Money of Great Britain, one Month after Date, for Value receiv'd; by Reason of which, and by Force of the Statute in that Case made and provided, the said *A.* became liable to pay to the said *C.* the said twenty Pounds, at the Time in the said Note for that Purpose limited and appointed; and being so indebted, the said *A.* in Consideration thereof, the same Day and Year abovemention'd, at the Parish and Ward aforesaid, undertook, and faithfully promised the said *C.* that he would well and truly pay him.

A Declaration upon a promissory Note against the Defendant as Drawer, payable one Month after Date; setting forth that A. made a promissory Note for 20 l.

Common
Pleas.

*Another a-
gainst the
Defendant
as Draw-
er, payable
on Demand,
That A.
made ano-
ther Note
for 100l.
thereby pro-
mising to
pay the
same on
Demand.*

*Another
Declara-
tion against
the Defen-
dant, as
Indorser.
That G.F.
made a
Note for
50l. pay-
able to A.
That A.
indors'd it
to G,*

him the said Sum of twenty Pounds mention'd in the said Note, at the Time for that Purpose therein limited and appointed. And whereas also the said *A.* afterwards, (that is to say) on the tenth Day of *April*, in the Year of our Lord One thousand seven hundred and thirty-two, at *London* aforesaid, in the Parish and Ward aforesaid, made another promissory Note in Writing, bearing Date the Day and Year last above mention'd, and subscribed the same with his own Hand, and deliver'd it to the said *C.* and thereby promised to pay to the said *C.* One hundred Pounds, of like lawful Money of *Great Britain*, on Demand, for Value receiv'd; by reason whereof, and by Force of the Statute in that Case made and provided, the said *A.* became liable to pay to the said *C.* the said One hundred Pounds upon Demand; and being so liable, the said *A.* afterwards (that is to say) the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, undertook, and faithfully promised the said *C.* he would well and truly pay him the said One hundred Pounds whenever he should be thereto required. And whereas one *G. F.* afterwards, (that is to say) the tenth Day of *May*, in the said Year of our Lord One thousand seven hundred and thirty-two, made his promissory Note in Writing, bearing Date the Day and Year last mention'd, and subscrib'd the same with his own Hand, and deliver'd it to the said *A.* and thereby faithfully promised, that he the said *G.* would pay to the said *A.* or Order, fifty Pounds, six Weeks after Date, for Value received: And afterwards, and before Payment of the said fifty Pounds, or any Part thereof, to the said *A.* (that is to say) on the tenth Day of *June*, in the Year aforesaid, at the Parish and Ward aforesaid, the said *A.* by an Indorsement on the said Note in Writing, bearing Date the Day and Year last

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Pleas.

last mention'd, subscribed with the Hand-writing of the said *A.* directed and appointed the said *G.* to pay the Contents of the said Note to him the said *C.* or his Order, for Value receiv'd. And the said *C.* saith, That in Fact, he the said *C.* after the Expiration of the said six Weeks after the said Date of the said Note, (that is to say) the first Day of *July*, in the Year aforesaid, at the Parish and Ward aforesaid, shewed the said *G.* the said Note, with the said Indorsement thereon, and required the said *G.* to pay him the said *C.* the said fifty Pounds therein contain'd, according to the Tenor of the said Note and Indorsement thereon made as aforesaid; but he the said *G.* then and there refused to pay the same to the said *C.* of which the said *A.* afterwards, (that is to say) the said first Day of *July*, in the Year aforesaid, at the Parish and Ward aforesaid, had Notice; by reason whereof, and by Force of the Statute in that Case made and provided, the said *A.* became liable to pay to the said *C.* the said fifty Pounds, mention'd in the said last mention'd Note, and being so liable, the said *A.* afterwards, (that is to say) on the First Day of *July*, in the said Year of our Lord, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, undertook, and faithfully promised the said *C.* that he the said *A.* would well and truly pay him the said fifty Pounds whenever after he should be thereto required. And whereas, the tenth Day of *August*, in the said Year of our Lord One thousand seven hundred and thirty-two, at the Parish and Ward aforesaid, one *J. M.* made a promissory Note in Writing, bearing Date the Day and Year last mention'd, and subscribed the said Note with his own Hand, and deliver'd the same to one *S. T.* and thereby promised to pay to the said *S. T.* or Order, One hundred Pounds of like lawful Money of *Great Britain*, one Month after Date, for Value receiv'd.

*Another
Declaration
against
the Defen-
dant, as a
Second In-
dorser.
That J. M.
made a
Note pay-
ble to S. T.*

Common
Pleas.

receiv'd. And the said *S. T.* before Payment of the said last mention'd Sum, or any Part thereof, by his Indorsement in Writing upon the said Note, bearing Date the Day and Year last mention'd, subscribed with his own Hand at *London* aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One hundred Pounds mention'd in the said Note to one *W. L.* or his Order, for Value receiv'd. And the said *W. L.* afterwards, and before the Expiration of the said Month, after the Date of the said Note, and before Payment of the said One hundred Pounds therein mention'd, or any Part thereof, by another Indorsement in Writing, bearing Date the Day and Year last above mention'd, subscrib'd with his own Hand, at *London* aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One hundred Pounds to the said *A.* at the Time in the said Note for that Purpose limited and appointed; And the said *A.* afterwards, and before the Expiration of the said Month, after the Date of the said Note, and before Payment of the said One hundred Pounds therein mention'd, or any Part thereof, by another Indorsement in Writing, bearing Date the Day and Year last above-mention'd, subscribed with his own Hand, at *London* aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One hundred Pounds to the said *C.* at the Time in the said Note for that Purpose limited and appointed; of which several Indorsements afterwards, the said tenth Day of *August*, in the Year last above-mention'd, the said *J. M.* had Notice at *London* aforesaid, in the Parish and Ward aforesaid. And the said *C. D.* in Fact says, That afterwards, and at the Expiration of one Month from the Date of the said Note last mention'd, (that is to say) on the twelfth Day of *September* following, at the Place aforesaid,

aforesaid, he the said *C. D.* shew'd the Note, with the several Indorsements abovemention'd, thereon made and subscribed, to the said *J. M.* and then and there requested him to pay the said Sum of Money contain'd in the said Note, to the said *C. D.* according to the Tenor and Purport of the same; but he the said *J. M.* then and there refused to pay the same; of which the said *A.* afterwards, (that is to say) the Day, Year, and Place last abovemention'd, had Notice from the said *C.* (and the said Sum of Money mention'd in the said last mention'd Note, or any Part thereof, not having been paid either by the said *J. M.* or by the said *S. T.* or by the said *W. L.*) by reason thereof, and by Force of the Statute in that Case made and provided, the said *A.* became liable to pay to him the said *C.* the Sum of Money contain'd in the said Note; and being so liable, the said *A.* afterwards, (that is to say) the same Day and Year last above-mentioned, at *London* aforesaid, in the Parish and Ward aforesaid, undertook, and faithfully promised to pay to the said *C.* the said Sum last mention'd, whenever he should be thereto required. Nevertheless, the said *A.* not regarding his said several Promises and Undertakings, but contriving, and fraudulently intending to deceive and defraud the said *C.* hath not paid him the said several Sums of Money, or any Part thereof; altho' the said *A.* afterwards, (that is to say) the said Day and Year last abovemention'd, and oftentimes afterwards, at *London* aforesaid, in the Parish and Ward aforesaid, was by the said *C.* thereto required; but the said *A.* hitherto hath, and still doth refuse so to do, whereby the said *C.* saith, that he is injur'd and endamaged to the Value of five hundred Pounds; and therefore brings this Suit, *and so forth.*

Doxton

Common
Pleas.

Morton against Sleddall.

Declarati- Midd. (to wit); John Morton complains of John
on upon a Sleddall in the Custody of the Marshal, and so
Bill of Ex- forth, for that whereas the said John Sleddall on the
change a- 13th of April, in the Year of our Lord one thou-
gainst the sand seven hundred and seventeen, at Westminster in
Drawer, the said County, (he then being a Person trading,
the Person merchandizing, and using Commerce, at Westmin-
upon whom ster aforesaid,) according to the Usage and Cu-
it was stom of Merchants, made his certain Bill of Ex-
drawn re- change in Waiting, subscribed with his own Hand,
fusing to ac- bearing Date the same Day and Year, and directed
cept it, the said Bill of Exchange to Kingsmill Eyre; by
Lilly 44. which said Bill of Exchange, the said John Sled-
dall required the said Kingsmill to pay to one Thomas
Pipon, or to his Order, the Sum of twenty Pounds,
twenty Days after Sight of the said Bill, Value re-
ceiv'd, and to place it to the Account of Subsistence,
for the Use of Captain Spicer's Company of Inva-
lids; which said Thomas Pipon, afterwards, (to wit) on
the 14th Day of May, in the said Year of our Lord,
at Westminster aforesaid, by his Indorsement upon
the same Bill of Exchange, made according to the
Usage and Custom of Merchants, order'd the Con-
tents of the said Bill to be paid to one John Vor-
ler, or to his Order; which said John Vorler af-
terwards, (to wit) on the 27th Day of May, in the
Year aforesaid, at Westminster aforesaid, by his In-
dorsement upon the same Bill of Exchange made, ac-
cording to the Usage and Custom of Merchants, or-
dered the Contents of the same Bill, to be paid to
the said John Morton, or to his Order: And the
said John Morton in Fact says, that afterwards, (to
wit) on the first Day of June, in the Year abovesaid,
at Westminster aforesaid, he shewed the said Kingsmill
Eyre

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Eyre the said Bill, with the said Indorsements thereupon made, and then and there required him to accept the said Bill, which the said *Kingsmill* then and there refused to do, or ever to pay the said twenty Pounds therein mentioned; of which Premises, the said *John Sleddall* afterwards, (to wit) on the eighth Day of *June*, in the Year aforesaid, at *Westminster* aforesaid, had Notice, by Reason of which Premises, he the said *John Sleddall*, according to the Usage and Custom of Merchants, became, and is chargeable to pay to the said *John Morton* the said twenty Pounds mentioned in the said Bill of Exchange. And the said *John Sleddall*, being so chargeable, afterwards, (to wit) the same Day and Year at *Westminster* aforesaid, in Consideration thereof, undertook, and to the said *John Morton* then and there faithfully promised, that he the said *John Sleddall*, would well and truly content and pay to the said *John Morton* the same twenty Pounds. And also whereas the said *John Sleddall*, on the 30th Day of *August*, in the Year aforesaid, was indebted to the said *John Morton*, in Eighty Pounds, for Money by the said *John Sleddall* before that Time received, to the Use of the said *John Morton*; and being so indebted, the said *John Sleddall*, the Day and Year last aforesaid at *Westminster* aforesaid, in Consideration thereof, undertook, and then and there faithfully promised to the said *John Morton*, that he the said *John Sleddall* would well and truly content and pay to the said *John Morton*, the said eighty Pounds, whenever he should be thereto required. Nevertheless the said *John Sleddall* not regarding his said several Promises and Undertakings, but wickedly and fraudulently intending craftily and subtilly to deceive and defraud him the said *John Morton* in that Behalf, hath not paid the said several Sums of Money, or any Part thereof, to the said *John Morton*,

Common Pleas. *Morton*, altho' the said *John Sleddall* was requested thereto by the said *John Morton* afterwards, (to wit) on the 31st of *August*, in the Year aforesaid, and often after that Time at *Westminster* aforesaid, but always hitherto hath, and still doth refuse so to do, to the Damage of the said *John Morton*, eighty Pounds; for which he brings this Suit, and so forth.

A Declaration in Case for scandalous Words spoken of a Tradesman.

London. A. B. late of *Breadstreet*, in the Parish of *St. Mildred Breadstreet, London*, Turner, was attach'd to answer to *C. D.* of a Plea of *Trespass upon the Case*, and so forth: And whereupon the said *C.* by *George Woodcraft* his Attorney complains, that whereas he the said *C.* at *London*, (that is to say) at the Parish of *St. Mary le Bow*, in the Ward of *Cheap*, is a good, true, faithful Subject of our Sovereign Lord the King, and is, and always hitherto hath been of a good Fame, Credit and Reputation, and is, and always hath been reputed as such, as well with, and by his Neighbours, as also with, and by many other Persons of good Substance, and Subjects of our said Sovereign Lord the King, living remote from the said *C.* and whereas the said *C.* now doth, and for several Years last past, hath used and exercised the Art or Mystery of a Mercer at *London* aforesaid, in the said Parish and Ward, and ever since he hath so used and exercised such Art or Mystery, hath got his Livelihood in the Way of Merchandize, by buying and selling such Wares, Merchandizes, and Commodities, as have used to be bought and sold by others exercising the same Art and Mystery, without any Deceit, or having been at any Time backward

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wait in paying his Debts, and without the least Colour or Suspicion of having been a *Bankrupt*, or liable to the several Statutes made concerning *Bankrupts*, or either of them; and by means of having so behaved himself, had got, obtained and enjoyed the good Esteem and Opinion, as well of his *Neighbours* and *Creditors*, as of other Persons his Majesty's Subjects, and Persons of great Worth, Credit and Reputation. *Nevertheless* the said *A.* contriving unjustly to prejudice, detract, and injure the said *C.* in such his good Name, Credit, Reputation and Esteem, which he had so gained and obtained, as well amongst his *Neighbours* and *Creditors*, as with and among other great and reputable Persons, *living remote* from the said *C.* on the 10th Day of *May*, in the Year of our Lord 1732, at *London* aforesaid, in the said Parish of *St. Mary le Bow*, in the Ward of *Cheape*, in the Presence of several of his said Majesty's Subjects; he the said *A.* maliciously, openly and publicly spoke, pronounced, and published these false, scandalous and malicious *English* Words following, to and of the said *C.* (that is to say) *thou*, (meaning the said *C.*) *art a Bankrupt, and a Drunkard, and of no Credit.* By means of speaking, pronouncing and publishing, which false, scandalous and malicious Words, he the said *C.* is not only greatly hurt and prejudiced in his good Name, Credit and Reputation, but is also much damnified in transacting his lawful Affairs, in the said Way of buying and selling such Commodities, as belong to the said *Art* and *Mystery* of a *Mercer*, to the Damage of the said *C.* five hundred Pounds; and therefore he brings this Suit to recover Damages by reason of the Premises.

Declarations.

Declarations in Debt.

A Declaration upon an Assignment of a Bail-Bond against the principal Defendant, at the Suit of the Assignee of the Sheriff, by force of the Statute in that Case made and provided.

Suffolk. *Thomas Thorpe*, late of *Stowmarket*, in the said County *Woollendrapers*, was summon'd to answer to *William Whitechurch*, Gentleman, Assignee of *Toby Bloss*, Esq; the late Sheriff of the County of *Suffolk*, according to the Form and Effect of the Statute in such Case made and provided, of a *Plea*, that he render to the said *William* forty Pounds of lawful Money of *Great Britain*, which he owes to, and unjustly detains from him; and thereupon the said *William*, by *Thomas Evans* his Attorney complains, that whereas on the 12th Day of *February*, in the Year of our Lord 1728, the said *William* sued, and prosecuted out of this Court of our Sovereign Lord the King of *Common Bench*, his said Majesty's Writ, called a *Capias*, against the said *Thomas*, at the Suit of him the said *William*, returnable before his said Majesty's Justices of the *Common Bench*, directed to the then Sheriff of the said County of *Suffolk*: By which said Writ his said Majesty commanded the Sheriff of *Suffolk*, that he should take the said *Thomas*, if he was to be found in his *Baliwick*, and safely keep him, so that he might have his Body before his said Majesty's Justices at *Westminster*, in *fifteen Days from the Feast Day of Easter*, to answer to the said *William* of a *Plea* of *Trespas*; and also to answer to the said

said *William*, according to the Custom of his said Majesty's Court, in a Plea of *Trespass upon the Case on Undertakings*, to the Damage of the said *William* forty Pounds, which said Writ afterward, and before the Return thereof, (that is to say) on the 10th Day of *March*, in the said Year of our Lord 1728, at *Stowmarket* in the said County, was delivered to the said *Toby Bloss*, then Sheriff of the said County of *Suffolk*, to be executed in due Form of Law. By Virtue of which said Writ, the said *Toby* afterwards, and before the Return of the said Writ, (that is to say) on the said 10th Day of *March*, in the said Year of our Lord, at *Stowmarket* aforesaid, took and arrested the said *Thomas*; and during the Time the said *Toby* so had the said *Thomas* in his Custody, by Virtue of the said Writ, he the said *Toby*, then and there took Bail for the Appearance of the said *Thomas*, at the Return of the said Writ, (that is to say) the said *Thomas* himself, and *Joseph Selgood* of *Stowmarket* aforesaid, *Chapman*, and *Timothy Trueman* of the same Place *Shoemaker*; and the said *Thomas* did on the same 10th Day of *March*, in the said Year of our Lord, by his *Writing Obligatory*, commonly call'd a *Bail-Bond*, permit himself to be bound to the said *Toby*, by the Name of *Toby Bloss*, Sheriff of the County of *Suffolk*, in the said Sum of forty Pounds, to be paid to the said Sheriff or his *Assigns*, whenever after he the said *Thomas* should be thereto required, with a *Condition* thereunder written; that if the said *Thomas* should appear before his said Majesty's Justices at *Westminster*, in *fifteen Days from the Feast-Day of Easter* then next following, to answer to the said *William* of a Plea of *Trespass*, and also in a Plea of *Trespass on the Case on Undertakings*, to the Damage of the said *William* forty Pounds, that then the said *Writing Obligatory* should be Void, and of none Effect, or else should be and remain in full Force, Power and

Common Pleas. and Virtue, as by the said *Writing Obligatory* and *Condition* thereunder written, Relation being thereunto had, may more fully and at large appear. And the said *William* in Fact declares, that the said *Thomas* did not appear before his said Majesty's Justices at *Westminster*, within the said *fifteen Days* from the said *Feast-Day of Easter*, mentioned in the said *Condition*, according to the Form and Effect of the said *Condition*, whereby the said Bond became forfeited to the said *Toby Blofs*, as Sheriff of the said County. And the same being so forfeited, he the said *Toby* afterwards, (that is to say) on the 20th Day of *April*, in the said Year of our Lord, at *Stowmarket* aforesaid, (at the Request of the said *William*, Plaintiff in that Suit) by his Indorsement in Writing upon the said Bond, in the Presence of two credible Witnesses, (that is to say) *Burrell Keeble* and *William Chaplyn*, assign'd the said Bond to the said *William*, according to the Form of the Statute in such Case made and provided, of which said Indorsement the said *Thomas* afterwards, on the said 20th Day of *April* had Notice, (that is to say) at *Stowmarket*, in the said County. By reason of which Promises, and by Force of the Statute in such Case made and provided, an Action accrued to the said *William*, as Assignee to the said *Toby Blofs*, Sheriff of the said County of *Sussex*, to require, and have from the said *Thomas*, the said Sum of forty Pounds. *Nevertheless* the said *Thomas* altho' often required, hath not paid the said Sum of forty Pounds, either to the said *Toby Blofs*, or to the said *William*, but hitherto always hath, and still doth refuse to pay the said Sum to the said *William*, to the Damage of the said *William* ten Pounds; and therefore he brings this Suit to recover his said Debt, together with his Damages occasion'd by the Detaining the same; and the said *William* brings here into this Court the said *Wri-*

Writing Obligatory, together with the said Indorsement made thereon as above, the respective Dates whereof are the Days and Years above for that Purpose respectively mentioned.

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A Declaration in Debt upon a Bond.

Devonshire. *A. B.* late of *Southmalton*, in the County of *Devon*, *Mercer*, otherwise called *A. B.* of *Southmalton*, in the County of *Devon*, *Mercer*, was summon'd to answer to *C. D.* of a *Plea*, that he render to him twenty Pounds of lawful Money of *Great Britain*, which he owes to, and unjustly detains from him, *and so forth*; And thereupon the said *C.* by *Thomas Lyte* his Attorney, complains, that whereas on the first Day of *March*, in the Year of our Lord 1722, at *Tiverton*, in the said County, the said *A.* by his *Writing Obligatory*, (commonly called a *Bond*) suffer'd himself to be bound to the said *C.* in the said Sum of twenty Pounds of lawful Money of *Great Britain*, to be paid to the said *C.* whenever after the said *A.* should be thereto required. *Nevertheless* the said *A.* (altho' often required) hath not paid to the said *C.* the said Sum of twenty Pounds, or any Part thereof, but hitherto altogether hath, and still doth refuse to pay the same, to the Damage of the said *C.* ten Pounds; and thereupon he brings this Suit to recover his said Debt and Damages, occasion'd by Detaining the same: And he brings into this Court the said *Writing Obligatory*, which gives sufficient Testimony of the said *Debt*, the Date whereof is the Day and Year above mentioned.

Note; there have been several Ways of declaring upon Bonds; some using the Words that the Defendant *Obligavit se in penali*

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uali summa; the Form in the King's Bench generally made Use of is, that the Defendant (*Cognovit se teneri & firmiter Obligari*) but the usual Course in the Common Pleas hath been to make use of the Words *concessit se teneri*, which I have very good Authority from Littleton's *Diſt.* who in his giving an *Engliſh* Translation to this Word ſays, *Concedo generale verbum eſt unde vim accipit a natura contractus cui adjungitur, & concedere pro permittere temporarium eſt, cedere perpetuum.*

*A Declaration in an Action of Debt,
upon a Bond brought by the ſurviving
Obligee.*

Suffolk. *A. B.* late of *Ipswich*, in the County of *Suffolk*, Mariner, (otherwiſe called *A. B. de Gippo in Comitatu Suffolciæ Nautam*) was ſummon'd to answer to *C. D.* of a Plea, that he render to the ſaid *C.* fifty Pounds, which he owes to, and unjuſtly detains from him. And whereupon the ſaid *C.* by *Robert Hamby* his Attorney complains, that whereas the ſaid *A.* on the firſt Day of *July*, in the Year of our Lord 1732, at *Ipswich* aforeſaid, by his *Writing Obligatory*, (commonly called a Bond) permitted himſelf to be bound to the ſaid *C.* and to one *D.* now deceased, (whom the ſaid *C.* ſurvived) in the ſaid Sum of fifty Pounds, to be paid to the ſaid *C.* and *D.* or to one of them, whenever after the ſaid *A.* ſhould be thereto required. Nevertheless the ſaid *A.* altho' often required, hath not paid the ſaid Sum of fifty Pounds to the ſaid *C.* and *D.* or either of them, in the Life-time of the ſaid *D.* or to the ſaid *C.* after his Decease, but
hath

hath always refused Payment of the same to the said C. and D. in his Life-time, and now doth refuse Payment of the same to the said C. wherefore the said C. declares he is injured and endamaged to the Value of twenty Pounds; and thereupon he brings this Suit to recover his said Debt, together with his Damages, occasioned by detaining the same: And the said C. brings here into this Court the said *Writing Obligatory*, which testifies the said Debt; the Date of which is the same Day and Year above-mentioned.

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A Declaration upon a Bond, brought by Husband and Wife, as Executrix of the last Will and Testament of the Obligee, and the other Co-executrix against the Heir of the Obligor.

Devonshire. A. B. late of Southmolton, in the County of Devon, Gent. Son and Heir to C. B. otherwise called C. B. of Southmolton, in the County of Devon, Gent. was summon'd to answer to D. E. and S. his Wife, Executrix of the last Will and Testament of F. G. and to H. J. Co-executrix with the said S. of the said last Will and Testament of the said T. of a Plea, that he render to them one hundred Pounds, which he unjustly detains from them, *and so forth*: And whereupon the said D. E. and S. his Wife, and the said S. by John Cock their Attorney complain, that whereas the said C. (whose Heir the said A. now is) in his Life-time, (that is to say) on the first Day of June, in the Year of our Lord 1732, by a certain *Writing Obligatory*, (commonly call'd a Bond) suffer'd himself to be bound to the said T. in the said Sum of one hundred Pounds, to be

D

paid

Common Pleas. paid to the said *T.* in his Life-time, whenever after he the said *C.* should be thereto required. And in order to make a due Payment of the said one hundred Pounds, the said *C.* by the same *Writing Obligatory*, bound himself and his Heirs. *Nevertheless* the said *C.* in his Life-time, or the said *A.* Son and Heir to the said *C.* after his Decease, altho' often required, have not, nor either of them hath paid the said Sum of one hundred Pounds, or any Part thereof, either to the said *F.* in his Life-time, or to the said *S.* and *H.* or either of them, after the Decease of the said *F.* and before the *Espousals* celebrated between them the said *D.* and *S.* or to the said *D. S.* and *H.* after the said *Espousals* celebrated between the said *D.* and *S.* but the said *C.* in his Life-time, and the said *A.* after his Decease, have hitherto refused to pay them, or either of them, the said one hundred Pounds: Whereupon the said *D. S.* and *H.* say, they are injured and endangered to the Value of twenty Pounds, and in Delay of the Execution of the said last Will and Testament of the said *F.* and thereupon they bring this Suit, *and so forth.* And they the said *D. S.* and *H.* bring into this Court as well the said *Writing Obligatory*, which gives a sufficient Testimony of the said Debt, the Date whereof is the Day and Year above-mentioned; as also the *Letters Testamentary*, by which it may sufficiently appear, that they the said *S.* and *H.* are Executrixes of the said last Will and Testament of the said *T.* and therefore have the *Administration* of all and singular the Goods and Chattles, Rights and Credits of the said *T.* at the Time of his Death.

A Decla.

*A Declaration in an Action of Debt for
Rent, upon a Lease Parol laid two
several Ways.*

Norfolk. A. B. late of *Thetford*, in the County of *Norfolk*, *Yeoman*, was summon'd to answer to *C. D.* of a *Plea*, that he render to him forty Pounds of lawful Money of *Great Britain*, which he owes to, and unjustly detains from him, and so forth. And thereupon the said *C.* by *Robert Martin* his Attorney complains, that whereas the said *C.* on the 20th Day of *March*, in the Year of our Lord 1731, at *Thetford* aforesaid, had demised, and to Farm let to the said *A.* one *Messuage*, one *Garden*, ten *Acres of Land*, ten *Acres of Meadow*, and ten *Acres of Pasture*, with the *Appurtenances* situate, lying and being in the Parish of *Shipdham*, in the said County, for him the said *A.* and his *Assigns*, to have and occupy the said *Tenements*, with the *Appurtenances*, from the *Feast of the Annunciation of the Blessed Virgin Mary* then next following, unto the full End and Term of one whole Year, from thence next Ensuing, and fully to be compleat, and ended; and so from Year to Year, as long as both Parties should please, yielding and paying therefore yearly, and every Year so long as the said *A.* should have and occupy the said *Tenements*, with the *Appurtenances*, by Virtue of the said Demise, to the said *C.* the yearly Rent or Sum of forty Pounds of lawful Money of *Great Britain*, at the four most usual Feasts or Days of Payment in the Year, (that is to say) on the Feasts of the *Annunciation of the Blessed Virgin Mary*, *St. John the Baptist*, *St. Michael the Archangel*, and the *Birth of our Lord Christ*, in every Year, by even and equal Portions; the first Payment thereof to begin, and to be made on the Feast of *St. John the Baptist* then next ensuing.

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By Virtue of which said Demise, the said *A.* entered into the said Tenements, with the Appurtenances to him demised, in the Manner as above set forth, and had held, and occupied the same, until the Feast of the *Annunciation of the Blessed Virgin Mary*, in the Year of our Lord 1732, and the Sum of twenty Pounds, (Part of the above-mentioned forty Pounds) for Half a Year's Rent, of the said annual Rent for the said Tenements, with the Appurtenances, was due at the said Feast of the *Annunciation of the Blessed Virgin Mary*, in the said Year of our Lord 1732, and in Arrear, and is yet unpaid to the said *C.* whereby an Action accrued to the said *C.* to require, and have of the said *A.* the said Sum of twenty Pounds, Part of the said forty Pounds above-mentioned. And whereas also the said *C.* afterwards, (that is to say) on the 25th Day of *March*, in the Year of our Lord 1731, at *Thetford* aforesaid, had demised, and to farm let to the said *A.* one other Messuage, one other Garden, ten other Acres of Land, ten other Acres of Meadow, and ten other Acres of Pasture, with the Appurtenances, situate, lying and being in the said Parish of *Shipdham*, in the said County of *Norfolk*, for him the said *A.* and his Assigns, to have and occupy the same, unto the full End and Term of one whole Year, from thence next ensuing, and fully to be compleat and ended; and after the Expiration of the said one whole Year, as long as both Parties should please, yielding and paying therefore yearly, and every Year so long as the said *A.* should have and occupy the said Tenements, with the Appurtenances, to the said *C.* at and according to the Rate of forty Pounds a Year. By Virtue of which said Demise last mention'd, the said *A.* enter'd into the said last mention'd Tenements, with the Appurtenances, and held and occupied the same, until the 25th Day of *March*, in the Year of our Lord

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Lord one Thousand seven Hundred and Thirty-two, and the Sum of twenty Pounds, (Residue of the abovementioned *forty Pounds*) for Half a Year's Rent for the said *Tenements with the Appurtenances*, last mentioned to have been demised, was on the said *Twenty-fifth Day of March*, in the said Year of our Lord one Thousand seven Hundred and Thirty-two, in arrear, and yet is unpaid to the said *C.* whereby an Action accrued to him the said *C.* to require and have of the said *A.* the said last mentioned twenty Pounds, Residue of the said *forty Pounds*. *Nevertheless* the said *A.* altho' often required, hath not rendered to the said *C.* the said several Sums of twenty Pounds and twenty Pounds, or any Part thereof; but hath altogether hitherto denied, and still doth deny the Payment of the same, to the Damage of the said *C.* ten Pounds; and therefore he brings this Suit to recover his said Debt, and Damages occasioned by detaining the same..

A Declaration upon a Recognizance, upon a Habeas Corpus after Judgment in the Common Pleas, affirmed in the King's Bench by Writ of Error.

Trinity the eleventh of King GEORGE.

Middlesex. Robert White late of Hatton Garden, in the said County, Taylor, was summoned to answer to Thomas Wilkins, of a Plea that he render to him fifteen Shillings, which he owes to, and unjustly detains from him. And whereupon the said Thomas, by George Wheeler his Attorney, declares, That *whereas* the said Robert, otherwise called Robert White of Hatton Garden in the County of Middlesex, Taylor, on the twentieth Day of Ja-

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nuary, in the Year of our Lord One Thousand seven Hundred and twenty, came before *Robert Tracy, Esq;* one of his Majesty's *Justices* of the *Common Bench*, at his Chambers situate in *Serjeants-Inn* in *Fleetstreet*, in his proper Person, and became Bail for *John Bayley* in the Sum of *fifteen Pounds*, that the said *John Bayley* should appear in his proper Person, in his said Majesty's Court of *Common Bench*, (that is to say) at *Westminster*; or by his Attorney sufficient in Law, to an *Original Writ*, at the Suit of the said *Thomas*, of a *Plea of Trespass on the Case*, to the Damage of the said *Thomas* fifteen Pounds, to be sued out and prosecuted by the said *Thomas* against the said *John*, in this same Court, before the *Morrow of the Ascension-Day* then next following, and to answer to the said *Thomas* in the same *Plea*: And also that if it should happen, *Judgment* should be given in the same Court, for the said *Thomas*, against the said *John*, in the said *Plea*, that then the said *John* should make Satisfaction to the said *Thomas* for the Damages that should be recovered by, and awarded for the said *Thomas*, against the said *John* in the said *Plea*; or that he the said *John* would on that Occasion render his Body to his Majesty's Prison of the Fleet; which said Sum of *fifteen Pounds*, acknowledged to the said *Thomas* in the Manner as above, he the said *Robert* willed and granted to be made of, and levied upon the Lands and Chattels of the said *Robert*, to the Use and Behoof of the said *Thomas*, if it should happen that Default should be made by the said *John* in any of the Premises, and he should be in a legal Manner convicted thereof; which said *Recognizance*, taken and acknowledged as above, before the said *Justice*; the said *Justice* afterwards (that is to say) on the *Twenty-third Day of January*, in the *sixth Year* of the Reign of his said present Majesty, delivered here into this Court with his own Hands,

to

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to be here in this Court enrolled of Record, and then and there the same was enrolled of Record in this Court, of the Term of St. *Hillary* in the said Year, before *Sir Peter King, Knight*, and his Companions, his said Majesty's *Justices* of this Court of Common Bench at *Westminster*, as by the Record thereof now remaining here in this his said Majesty's Court, before his said Majesty's Justices at *Westminster*, more plainly may appear: And of which said *Plea of Trespass upon the Case*, a certain *Plaint* had been before that Time levied in his said Majesty's Court, before then being one of the Sheriffs of *London*; and the same *Plaint* was, by the Command of his said Majesty by his Writ, sent and transmitted hither at *Westminster*, as by the Record thereof now likewise remaining here in this his said Majesty's Court at *Westminster* may appear. And the said *Thomas* by the Name of *Thomas Wilkins*, afterwards and before the said *Morrow of the Ascension of our Lord* next following, the said *Twenty-third Day of January*, in the said Year of our Lord one Thousand seven Hundred and Twenty, (that is to say) on the *tenth Day of February* in the said Year, sued out an Original against the said *John*, by the Name of *John Bayley*, late of *London*, Gentleman, of the said *Plea of Trespass upon the Case*, to the Damage of the said *Thomas*, *fifteen Pounds*, out of his Majesty's high Court of Chancery, the same then being at *Westminster*, directed to the Sheriffs of *London* then for the Time being, returnable (and afterwards returned) at *Westminster*, before his said Majesty's *Justices* of this Court, in *fifteen Days from the Feast-Day of Easter*, to which said *Original* the said *John* appeared by *Newton Stagg* his Attorney, according to the Form of the said *Recognizance*. And also, altho' the said *Thomas* afterwards, (that is to say) in *Easter Term*, in the said *sixth Year* of the Reign of his said present

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Majesty, in this his said Majesty's Court, before Sir *Peter King, Knight*, and his Companions, then his said Majesty's *Justices* of the said *Common Bench*, recovered against the said *John Twenty-four Pounds*, of and upon the said *Plea*, which were awarded to the said *Thomas* here in this his said Majesty's Court of *Common Bench* at *Westminster*, for his Damages which he sustained, as well by Reason of the said *Trespass upon the Case*, committed by the said *John* against the said *Thomas* as abovementioned, as for his Expences and Costs, laid out by him about his Suit in that Behalf, whereof the said *John* is convicted, as by the Record and Proceedings thereof, (which our said Sovereign Lord the King, by Virtue of his said Majesty's Writ *for correcting Errors*, sued out by the said *John* of and upon the Premises, caused to be brought before himself, and which is now remaining in his said Majesty's Court before the *King himself* in all Things affirmed) may more fully and at large appear; which said *John Bayley* mentioned in the said *Recognizance*, and the said *John Bayley* mentioned in the said *Plaint, Original*, and *Judgment* thereupon had, as above, are one and the same and not different Persons; and the said *Thomas Wilkins*, mentioned in the said *Recognizance*, and the said *Thomas Wilkins* mentioned in the said *Plaint, Original* and *Judgment*, are one and the same and not different Persons. Nevertheless the said *John* hath not made Satisfaction to the said *Thomas* for the said Damages, nor rendered his Body to his Majesty's *Prison of the Fleet*, according to the Form of the said *Recognizance*, whereby an Action accrues to the said *Thomas* to require and have of the said *Robert* the said *fifteen Pounds*, by him acknowledged in the Manner as above, according to the Force, Form and Effect of the said *Recognizance*. Nevertheless the said *Robert*, altho' often required, hath not paid the said *fifteen Pounds*,

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or any Part thereof, to the said *Thomas* ; but hitherto altogether hath, and still doth refuse to pay the same ; whereby the said *Thomas declares*, that he is injured and endamaged to the Value of *twenty Pounds*, and therefore he brings this Suit for the Recovery of his said Debt and Damages, occasioned by detaining the same.

Before I proceed to treat of *Pleas*, I shall here just give a little Sketch of the Introductive Part of a *Plea*, and then insert a few Instances only of *Pleas in Abatement* ; for were I to mention more, it would not answer the End for which this Treatise is designed, which is only to be a *small Pocket-Book*.

And first, it must be understood, that the Tenour of the Writ is to compel the Defendant's *Appearance* at the *Return* of the *Process*, and defend the Charge that the Plaintiff shall then lay against him ; at which Time every *Defendant*, either in Person or by Attorney, did in ancient Times appear and plead what they had in their Defence *Ore tenus* ; that is, they related the Substance of their Defence at the Bar, if it was any special Matter, then their *Counsel* spoke at the Bar the Subject Matter of their Clients *Defence* ; and the *Plaintiff's* Counsel did likewise *ore tenus* maintain their Client's Charge by way of *Replication*, and so on to the rest of the *Pleadings* ; and the *Entering Clerks* were then the proper Persons who enter'd what had been so pleaded ; and if upon opening the Count, the Court

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saw

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Pleas.

saw plainly that the Plaintiff had no Title to maintain his Writ, then they *ex Officio* abated it ; and my Lord Chief Justice *Vaughan* hath taken Notice of one or two Instances of that Nature. One was where a Man brought an *Action of Debt* against another, and counted that he sold certain Goods to his *Testator* for the Sum in Demand ; *Littleton* caused the Attorney for the *Defendant* to be demanded, and so he was, and *Littleton* demanded of him if he would avoid the Suit ? who answered, *Yes* ; then *Littleton* turned about to the *Plaintiff's* Attorney, and said, *The Court awards that you take nothing by the Writ, for know,* (says he) *that a Man shall not have an Action against Executors, where the Testator might have waged his Law.* And then says *Brook*, Note, this is a Judgment *ex Officio*.

There is no Occasion here to mention that *Brook*, in abridging the Case, mistook the Plaintiff for the Defendant, and the Word avow for avoid ; but I refer you for that Purpose to *Vaughan* 98.

Pleas to the Plaintiff's Declaration must be either *Dilatory* or in *Bar*.

A *Dilatory* Plea is an Exception alleged and made good in Law, and is as much as *Exceptio dilatoria* with the Civilian's. *Briton*, C. 52. *Bracton Tractatus quintus*, Title *de Exceptionibus*.

Where the *Defendant* waves the Matter, or says nothing, or nothing to the Purpose, there the Judgment is peremptory for the *Plaintiff*, and is entered either in
this

this Manner, (that is to say) that the Defendant cannot deny the said Action of the *Plaintiff*, nor but that he owes him so much Money.

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Pleas.

Or otherwise it is thus, when the Defendant's Attorney comes into Court to defend the Force, Injury, and the Damages, &c. he is supposed to be called upon by the Court for his Client's *Defence*; and then if he says to the Court, that he is not instructed by his *Client* to make any *Defence* to the Plaintiff's Action, whereby the Plaintiff remains undefended by the Defendant; whereupon the Court awards the Plaintiff a Recovery of his *Debt* or *Damages*, as the Case is.

If the Defendant pleads, the true Order of pleading is to plead, 1st to the Jurisdiction of the Court. 2. In *Disability* of the Person of the Plaintiff. 3. to the *Count*. 4. to the Writ. And 5. to the Action.

In order to plead after the *Count*, the Defendant, to be assisted to plead the better, shall have *Oyer*, if he demands it, of every Thing which is not Parcel of the *Record*; and it hath been said, that in *Pleas* after the *Count*, even tho' in Abatement, he ought to make a full *Defence* of the *Wrong*, *Injury*, and *Damages*; but I make a Doubt whether that be Law; however, I am sure the safest Way is to plead always in Abatement, thus,

And the Defendant, by (such a one) his Attorney, comes and defends the Force and Injury, then go on with his *Plea*.

But

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Pleas.

But in Pleas to a *Scire facias*, there it is best to plead in this Manner.

And the said Defendant comes and prays Judgment of the said Writ, because a *Scire facias* is no positive Charge of a Wrong or Injury, but a Method of bringing him into Court to shew Cause why *Execution* should not be awarded for the Plaintiff.

But in every *Plea*, except to a *Scire facias*, it is necessary, as my Lord Coke says in his *Institutes*, 127. that the Defendant should come and defend the Force and Injury laid to his Charge, to make him a Party to the Matter in Variance, that is to the Charge; that the Plaintiff has given Pledges that he will maintain against him, now in a *Scire facias*, the Defendant is not in Law a Party to the Suit till he appears, nor is there any Charge of Wrong or Injury against him.

But if it should be objected to me, that where a *Scire facias* is sued out upon a *Judgment, post Annum & Diem*, there the Defendant is a Party to the Suit, and there was a Wrong, and Force, and Injury charged upon him: My Answer is, It must be considered, that no *Scire facias* lay in Personal Actions at *Common Law*, but was given by the Statute of *W. 2. cap. 45.* in lieu of a *New Original* upon the *Judgment*; and therefore the Parties to the Action and Judgment are at *Common Law* out of Court, and the Courts of *Common Law* would take no Notice of such Judgment before that Statute, till the Plaintiff had brought the Defendant into Court by a new *Original*, and compelled

led him to appear thereto; therefore as to any Suit, the Defendant by the *Scire facias* is not a Party, but may plead by *venit & dicit* only. Common Pleas.

I cannot here be so extensive upon this Head as I would, and therefore shall only lay down a few Observations that I have made, and which are most necessary to be under this Head.

These *Pleas* in *Abatement* are but little favoured because they are always in *dilatione celeris Justitiæ*, and therefore they are not to be received unless they come into Court within the first four Days within the Term, of which the Writ is returnable, and are never to be pleaded after a *General Imparance*.

Unless the Substance of the Plea be, that the Land is *ancient Demesne*, which is to be received after an *Imparance*. And the Reason thereof is, because if the Court gives *Judgment* against the *Defendant*, the Lord may reverse it by an Action of *Disceit*, and the Courts of Law will never give Judgments that are liable to be avoided, if they can help it. *Latch* 83.

But if a Defendant enters a *special Imparance* with the Prothonotary, and pays two Shillings for the same, he may plead a Plea in *Abatement* at any Time within two Terms, before the Rule, which the Plaintiff's Attorney hath given for that Purpose, is expired.

But now *Imparances* by the foregoing Rule are taken away, in all Cases within that Rule, and dilatory Pleas are so much discouraged

Common Pleas. raged that in Personal Actions you cannot have Oyer of an *Original* without moving the Court for it, and shewing that you want it upon some better Foundation than to delay the Plaintiff; whereas heretofore the Defendant was not obliged to plead till he had Oyer; indeed in the *King's Bench* they still retain the old Method of making the *Plaintiff's* Attorney give the Defendant *Oyer* before he is obliged to plead; but it is otherwise in the Common Pleas, and there thought much better and more beneficial for the Suitor, that he should have a speedy *Judgment*. But some have said that *Imparlances* and *Oyer*, are natural Rights which every Subject of *England* is born to, and therefore should not be taken from them, nor should they be any ways obstructed in the Enjoyment of them; and to corroborate their Assertion, they quote a Case in 3 *Salk.* 186. *Ellis and Thomas*, where my Lord Chief Justice Holt said, that the want of an *Imparlance* where it appears the Defendant ought to have had it, is Error; and another Case in *Cumberb.* 13. of *Cook and Williams*, where it was likewise said by the then Chief Justice, that the want of an *Imparlance*, if pray'd, is Error; I submit these Considerations to the Learned; it is sufficient for our Purpose to take Notice where *Imparlances* are taken away.

By the Act of the 4th and 5th of Queen Anne, commonly called, the Act for the Amendment of the Law, these Pleas are not to be received, unless the Defendant makes

makes an Affidavit of the Truth of his Plea, or shews some probable Matter to the Court to induce them to believe the Fact of such dilatory Plea is true.

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Pleas:

Therefore Matter of Record in the same Court requires no Affidavit, and the Reason thereof arises from the foregoing Words of the Act, viz. (*or shews some probable Matter to the Court to induce them to believe that the Fact of such dilatory Plea is true*): And nothing can more induce the Court to believe a Fact to be true, than when it appears of Record. *Modern Cases* 43.

Abatement by the Death of one of the Plaintiffs or Defendants is aided by the Statute of the 8th and 9th of *William and Mary*, and for an Entry for that Purpose see hereafter.

No Advantage can be taken to a bad Declaration upon a *Demurrer* to a dilatory Plea. *Carthew* 170.

'Tis said that one may plead in *Abatement* of the Declaration where it is by Original; but if the Action be by Bill, you must plead in *Abatement* of the Bill only. 5 *Mod.* 144.

A Writ of Error depending is said to be no good Plea in *Abatement* to an Action of Debt upon a Judgment. But *contra* in 8 *Sbo.* 146.

But 'tis said that a Writ of *Error* depending in the *Exchequer Chamber*, is a good Plea in *Abatement* to an Action of Debt upon a Judgment in the *King's Bench*. 5 *Mod.* 68.

The

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Pleas.

The *Bail* cannot plead *Misnomer* of the Principal in Abatement, *Mod. Caf.* 289. nor shall one Partner plead the *Misnomer* of his Companion. *Lut.* 36.

In a *Replication* to a Plea in *Abatement* where Matter of *Fact* is pleaded, the Plaintiff must pray his *Damages*; because if upon an Issue a *Verdict* be found for him, he shall have final *Judgment*; but where a *Demurrer* is pleaded, the Plaintiff need only maintain his *Writ*, because if there is a *Demurrer*, the *Judgment* is only *quod respondeas ouster*. *Latch* 374. *Telv.* 112.

After a *Plea* in *Chief* you shall never be at Liberty to plead in *Abatement*. *Latch* 153.

Duplicity in *Abatement* is ill, as well as in *Bar*; therefore two *Outlawries* pleaded make the *Plea* ill. 2 *Show.* 80.

Where the Defendant concludes his *Plea* in *Abatement*, and the Plaintiff *demurs*, as to a *Plea* in *Bar*, all is discontinued. *Carthew* 138. 1 *Shore* 155.

What might have been pleaded in *Abatement* can never be assigned for *Error*, *Carthew* 124. nor pleaded to a *Scire facias* upon the *Judgment*. 1 *Salk.* 2.

Care must be taken where there is a *Plea* in *Abatement*, and afterwards a *Respondeas ouster* awarded, that Notice be taken of it on the *Plea-Roll*, on which you enter your *Verdict*, or the Plaintiff can never have his *Judgment*. *Carthew* 499. and because you shall

shall not be at a Loss for such an Entry, I have inserted one hereafter, viz. Common Pleas.

The Entry of a Judgment on a Respondas Ouster awarded.

At which Day as well the said (Plaintiff) as the said Defendant come in their proper Persons, and hereupon all and singular the Premises being viewed, and well understood by the Justices of this Court, It appeareth to the said Justices here, that the said Plea of the said (Defendant) is insufficient to quash the said original Writ of the said Plaintiff. Therefore it is considered by this Court that the said (Defendant) shall make a further Answer to the said original Writ of the said (Plaintiff) and thereupon the said (Defendant) comes and defends the Force, Injury and Damages, and whatever else he ought to defend, where and when this Court will consider thereof; and saith, (and then go on with your Plea, and the rest of your Proceedings.)

Pleas in Abatement.

A Plea of Privilege by an Attorney of the Common Pleas, pleaded to an Action brought in the King's Bench.

And the said J. C. in his proper Person, comes and defends the Force and Injury laid to his Charge, and saith, That long before the Exhibiting the Bill of

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Pleas.

* Note,
where you
plead Pri-
vilege in
another
Court than
where the
Privilege
arises from,
you must
plead it
Sub pede
Sigilli,
as in this
Precedent.

of the said *Dorothy*, he was, and continually after-
wards hath been, and now is, an *Attorney* of his
present Majesty's Court of *Common Bench* at *West-
minster*, as by his said Majesty's Writ of *Privilege*
to this Plea annexed, * *under the Seal* of the said
Court of *Common Bench*, may appear; and that he
is prosecuting and defending divers Suits, Pleas and
Affairs, of divers liege People and Subjects of his
present Majesty in the same Court of *Common Bench*,
as their *Attorney*. And the said *J.* saith, That he
and all other Attornies of the same Court of *Com-
mon Bench*, by a laudable and ancient Custom, and
according to the Laws of this Kingdom, and the
Liberties and Privileges of the said Court of *Com-
mon Bench*, Time out of Mind used and approved
of, ought not to be drawn or compelled to answer
before any Justices or other Officers of our said So-
vereign Lord the King, or other Judges whatsoever
in any Court, except before the *Justices* of the said
Court of *Common Bench* of our said Sovereign Lord
the King, at *Westminster*, on any Pleas or Com-
plaints, (*Pleas relating to Freeholds, Felonies and
Appeals only excepted*); and this he is ready to verify.
Wherefore he prays *Judgment*, whether he ought
to be compelled to answer the said *Dorothy* in the
said Plea, and so forth.

A Plea that the Plaintiff is outlawed.

And the said *A.* by *John Cock* his *Attorney*,
comes and defends the Force and Injury laid to his
Charge, and saith, that he ought not to be com-
pelled to make Answer to the said *Declaration* of
the said *C.* because he the said *A.* saith, that *hereto-
fore* (that is to say) in *Michaelmas Term*, in the *Sixth*
Year of the Reign of his present Majesty, one *G.
H.* impleaded the said *C.* by the Name of *C. D.*
late of *Bread-street, London*, in his Majesty's Court
of

Common
Pleas.

after- of *Common Pleas*, in a *Plea of Debt*. And he the
of his said C. forasmuch as he did not come into the said
West- Court of *Common Pleas*, to answer to the said G. H.
village in the said *Plea*, according to the Laws and Cus-
said toms of this Kingdom, was put in *Exigent* to be
at he outlawed in London: And on that Occasion after-
and wards, (that is to say) on Monday next after the
of his Feast of *St. Mark the Evangelist*, in the said sixth
ench, Year of the Reign of his present Majesty, was duly
at he outlawed, as by the Record and Proceedings thereof
Com- now remaining in this his said present Majesty's Court
and of *Common Pleas* at *Westminster*, may plainly appear;
the which said *Outlawry*, so as aforesaid, had and pro-
Com- nounced against the said C. is, and yet remains in
ved its full Force, unreversed and disannulled; and the
wer said C. D. mentioned in the said *Outlawry*, and
So- the said C. D. mentioned in the said *Original Writ*,
ver are one and the same and not different Persons; and
aid this he is ready to verify. Wherefore he prays *Judg-*
ord ment whether he ought to make Answer to the said
un- Declaration of the said C. he the said C. being out-
and lawed, as above, until the said *Outlawry* be rever-
fy. sed, and so forth.

A Plea of Misprision of Commorancy.

And the said *Alexander*, by *Robert Martin* his
Attorney, comes and defends the Force and Injury
above laid to his Charge, and prays *Judgment* of
the said *Writ*, because he saith that he now doth,
and at the Day of suing out the said *original Writ*
of the said C. did, and for many Years before had,
and ever since hath inhabited and dwelt in the Pa-
rish of *St. Dunstons in the West*, in the Ward of *Far-*
ringdon without, London; *Without That*, that the
said A. at the Day of suing out the said *original*
Writ of the said C. did, or at any Time before had,
or at any Time since hath inhabited and dwelt in
the

Common Pleas. the said Parish of *St. Clements Danes*, in the said County of *Middlesex*, as the said *G.* doth above suppose by his said *Writ*, and this he is ready to verify. Wherefore he prays *Judgment* of the said *Writ* and that the same may be quashed, *and so forth.*

The Statute of Additions pleaded.

And the said *J.* by *W. S.* his Attorney, comes and defends the Force and Injury laid to his Charge and prays *Judgment* of the said *Writ*; because he saith that by Force of the *Statute of Additions* in Writs in which Process of Outlawry lieth, the Addition of the Vill, Hamlet, Place and County of Commorancy of the said *J.* ought to have been contained in the said *original Writ* of the said *J.* and this he is ready to verify. Wherefore, inasmuch as such Addition is not contained in the said *Writ*, (wherein Process of Outlawry) lieth, the said *J.* prays *Judgment* of the said *Writ*, and that the same may be quashed, *and so forth.*

A Plea of Misnomer of the Defendant in his Sirname.

Robert Sims, who was arrested by the Name of *Thomas Symonds*, by *J. L.* his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays *Judgment* of the said *Writ*, because he saith that he is the same Person whom the said *T.* hath impleaded by the Name of *Robert Symonds*; and that he now is, and at the Time of suing out the said *original Writ* of the said *T.* was, and ever since his Nativity hath been called and known by the Name of *Robert Syms*, that is to say at *London* aforesaid, in the said Parish and Ward.

ward ; *Without that*, That he is, or at the Time of
 ing out the said *original Writ* of the said *T.* was,
 at any Time before or since, hath been called or
 known by the said Name of *Robert Symonds*, as the
 said *T.* by his said *Writ* doth above suppose ; and
 his he is ready to verify : Wherefore he prays
 Judgment of the said *Writ*, and that the same may
 be quashed, *and so forth.*

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For Misnomer in his Name of Baptism.

And *William Robins*, who was by the Sheriff of
Norfolk taken and arrested by the Name of *Robert*
Robins, by *Robert Martin* his Attorney, comes and
 defends the Force and Injury above laid to his
 Charge ; and saith, that he ought not to be com-
 pelled to make Answer to the said *Writ*, be-
 cause he saith that he is not, nor can be
 supposed, to be the same Person against whom the
 said *A.* hath brought his said *Writ* ; because he
 saith that he the said *William* was baptized by the
 Name of *William* ; and at the Time of the said *A.*'s
 ing out the said *original Writ* was, and always
 before and since hath been called and known by the
 said Name of *William Robins*, (that is to say) at
Thetford aforesaid, in the said County of *Norfolk* ;
Without that, That he at the Time of the said *A.*'s
 ing out his said *original Writ*, or at any Time
 before or since hath been, or now is called by the
 Name of *Robert Robins*, as by the said *Writ* above
 is supposed ; and this he is ready to verify. Where-
 fore he prays Judgment of the said *Writ*, and that
 the same may be quashed, *and so forth.*

That

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Pleas.

*That the Testator was alive at the Time
of suing out the Plaintiff's Original.*

Original
tested the
6th of No-
vember.

And the said *Grace* by *J. S.* her Attorney, comes and defends the Force and Injury above laid to her Charge, and craves *Oyer* of the said *original Writ* of the said *S.* and it is read to her in these Words: *George* the Second, (here recite the *Writ*, and then say) which being read and heard, she the said *Grace* prays *Judgment* of the said *Writ*, because she saith that the said *George* her late Husband, after the said *sixth Day of November*, in the said Year, (that is to say) on the thirtieth Day of the same Month of *November*, in the same Year, was alive and in good Health, at (the Place in the *Declaration*,) *Without That*, that the said *George* was dead at the said Time of the suing out the said *original Writ* of the said *S.* and this she is ready to verify: Wherefore she prays *Judgment* of the said *Writ*, and that the same may be quashed, *and so forth.*

Infancy in the Plaintiff.

And the said *B.* by *P. J.* his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays *Judgment* of the said *Writ* because he saith that the said *R.* now is within the Age of *twenty-one Years*, (that is to say) of the Age of *eighteen Years*, and no more; and that the said *R.* hath declared here in this Court, by *T. H.* his Attorney, in the Plea aforesaid; whereas by the Law of the Land the said *R.* ought to have declared by his *Guardian*, or by his next Friend, (to be specially admitted by this Court for that Purpose;) and this he is ready to verify. Wherefore inas-

much as the said *R.* is within the said Age of twenty-one Years, and hath declared in this Court by his Attorney, in the said *Action*, he the said *B.* prays Judgment of the said *Writ*, and that the same may be quashed, and so forth.

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Pleas.

General Issues.

And the said *John* by *William Stibbs* his Attorney, comes and defends the Force and Injury, and Damages, and whatever else he ought to defend, when and where this Court will take the same into Consideration, and saith, that he did not undertake in the Manner and Form as the said *Thomas* above complains against him ; and of this he puts himself upon the Country, and the said *Thomas* does likewise the same. Therefore the Sheriff is commanded, that he cause twelve free and lawful Men of the Body of his County to come here on the Octave of the Purification of the Blessed Virgin Mary, each of which to have ten Pounds a Year, in Lands, Tenements, or Rents, by whom the Truth of the Matter will be the better known ; and who are in no wise related to either of the said Parties, to recognize whether the said *John* did undertake in the Manner and Form as the said *Thomas* above complains against him ; because as well the said *John* as the said *Thomas* have submitted themselves to the *Fury*.

I submit it whether it would not be better to plead in this Manner.

Go on as before, to the Words *when and where this Court will take the same into Consideration*, and then to say, And the said *John* says, that he made

no

Common Pleas. no such Promise, (or Promises, as the Declaration is) in the Manner and Form, as the said *Thomas* above complains against him; *and then go on as before.*

Not Guilty. And the said *John* says, that he is in no wise Guilty of the Premises above laid to his Charge, as the said *Thomas* above complains against him; and of this he puts himself upon his Country, and the said *Thomas* does likewise the same, &c.

That he owes nothing. And the said *John* saith, that he does not owe to the said *Thomas* the said twenty Pounds, or any Sum of Money whatsoever, in the Manner and Form as the said *Thomas* above complains against him; *and of this, &c.*

That the Bond is not his Deed. And the said *John* saith, that he ought not to be charg'd with the Payment of the said *Debt*, by Virtue of the said *Bond*, because he says, that the said *Bond* is not his Deed; *and of this, &c.*

And if to a *Bill Penal*, then you say,

And saith, that he ought not to be charged with the Payment of the said *Debt*, by Virtue of the said *Bill*, because he saith that the said *Bill* is not his Deed; *and of this, &c.*

And so if the Declaration be in an Action of Debt for Rent upon an Indenture you say.

And the said *John* saith, that he ought not to be charged with the Payment of the said *Debt*, by Virtue of the said *Indenture*, because he saith, that the said *Indenture* is not his Deed; *and of this, &c.*

General Bars.

AND the said *John* (as before) and saith, Non Assumpsit in that the said *Thomas* ought not to have, or maintain his said *Action* against him thereon, because he saith, that he did not undertake, (or that he made no such Promise or Promises in the Declaration mention'd) at any Time within six Years, before the Day of the said *Thomas's* suing out his said Original Writ in such Manner and Form, as the said *Thomas* above complains, against him; and this he is ready to verify; wherefore he prays Judgment, whether the said *Thomas* ought to have, or maintain his said *Action* against him to recover Damages, by reason of the Premisses.

And the said *Thomas* saith, that he, (notwithstanding any thing above alledged by the said *John* in his Plea) ought not to be precluded from having his said *Action* against the said *John*, because the said *Thomas* saith, that the said *John*, within six Years before the Day of the Issuing out of the said Original Writ of the said *Thomas*, (that is to say) on the 20th Day of June, in the fifth Year of the Reign of our Sovereign Lord George the Second, King of Great Britain, and so forth, undertook, (or made such Promise or Promises, as in the said Declaration is, or are mention'd) in such Manner and Form, as the said *Thomas* above complains against him; and this he prays may be inquired of by the Country; and the said *John* prays likewise the same.

That he made no such Promise with-
in six Years.

E

Payment

Common
Pleas.

Payment pleaded to an Action on several Promises.

And the said *John*, by *J. L.* his Attorney, comes and defends the Force, Injury and Damages, and whatever else he ought to defend, when and where the Court will consider thereof; and saith, that the said *William* ought not to have or maintain his said Action against him, because he saith, that after the making the several Promises and Undertakings mention'd in the said *Declaration*, and before the suing out the said *Original Writ* of the said *William*, (that is to say) on the 10th Day of *July*, in the sixth Year of the Reign of his present Majesty at *Thetford* aforesaid, in the said County of *Norfolk*, he the said *John* paid to the said *William* the Sum of twenty Pounds, which he then and there received in full Satisfaction of all Sums of Money at that Time due from the said *John* to the said *William*; and this he is ready to verify; wherefore he prays *Judgment*, whether the said *William* ought to have, or maintain his said Action thereof against him, and so forth.

Replication thereto.

And the said *William* saith, that he ought not to be precluded from having his said Action against him, because he saith, that the said *John* hath not paid to the said *Thomas* the said Sum of twenty Pounds in full Satisfaction and Discharge of all the several Sums of Money due from the said *John* to the said *William*, in such Manner and Form as the said *John* hath above alledged in his Plea. And this he prays may be inquired of by the Country; and the said *John* prays likewise the same.

If there are more Promises than one, then, to such of the Promises as you think the Plaintiff can't recover upon, you must plead it thus; as suppose the Plaintiff declares of an *Insimul Computasset*, (that is to say) that the Plaintiff and Defendant accounted, and that there was so much in Arrear, besides an *Indebitatus Assumpsit*, for Goods sold and deliver'd, when there actually had been only Goods sold and deliver'd; but no Account stated; the Way to plead it is thus.

And the said *John*, as to the last mention'd Promise in the said Declaration, and also as to five Pounds Part of the said fifteen Pounds contained in the said first Promise mention'd in the said Declaration, saith, that he did not undertake, (or he made no such Promise and Undertaking) as the said *Thomas* hath declared against him; and of this he puts himself upon the Country; and the said *Thomas* does likewise the same. And as to ten Pounds, Residue of the said fifteen Pounds mention'd in the other Promise and Undertaking in the said Declaration, the said *John* saith, that the said *Thomas* ought not to have, or maintain his said *Action* thereof against him, because he saith, that after making the said last mention'd Promise and Undertaking contained in the said Declaration; and before the Issuing out of the said Original Writ of the said *Thomas*, (that is to say) on the tenth Day of September, in the Year of our Lord 1732, at the said Parish of *Clement's Danes*, he the said *John* paid to the said *Thomas* the said Sum of ten Pounds; and this he is ready to verify; wherefore he prays Judgment, whether the said *Thomas* ought to have, or maintain his said *Action* thereof against him, and so forth.

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Pleas.

Replication.

And the said *Thomas*, as to the said Sum of ten Pounds, Part of the said fifteen Pounds, mention'd in the said last Promise and Undertaking, saith, that notwithstanding any thing alledged by the said *John* in his *Plea* above-mention'd, he the said *Thomas* ought not to be precluded from having his said *Action* against him, because he saith, that the said *John* hath not paid to the said *Thomas* the said Sum of ten Pounds, in such Manner and Form as the said *John* hath above in his *Plea* alledged; and this he prays may be inquired of by the Country; and the the said *John* prays likewise the same.

If the Declaration contains five Promises, the one an *Indebitatus Assumpsit* for twenty Pounds for Work and Labour, another a *Quantum Meruit* for the same, an *Indebitatus Assumpsit* for Goods sold and deliver'd, and a *Quantum Valebant* for the same, and an *Instimul Computasser*.

And if the Defendant's Attorney is well satisfied from his Client, that he never bought any Goods of him, that there never was such an Account stated between them, and that his Work and Labour comes but to ten Pounds, his best way of pleading it, is thus.

And the said *John*, as to all the several Sums of Money contained in the second, third, fourth and fifth Promises mention'd in the said Declaration; and also as to ten Pounds Part of the said twenty Pounds mention'd in the said first Promise in the said Declaration;

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Declaration; the said *John* saith, that he did not undertake, in such Manner and Form, as the said *Thomas* above complains against him; and of this he puts himself upon the Country; and the said *John* doth likewise the same: And as to the said ten Pounds, Residue of the said twenty Pounds, mention'd in the said first Promise in the said Declaration, the said *John* saith, that the said *Thomas* ought not to have or maintain his said *Action* thereof against him, because he saith, that after the making of the said Promise and Undertaking, and before the Day of Issuing out the Original Writ of the said *Thomas*, (that is to say) *such a Day, Year and Place*, he the said *John* was ready, and tender'd Payment of the said Sum of ten Pounds to the said *Thomas*, which said Sum of ten Pounds so tender'd as aforesaid to the said *Thomas*, he the said *Thomas* then and there did, and always afterwards hath refused to accept; and that Sum he the said *John* is now ready to pay to the said *Thomas*, if the said *Thomas* is willing to accept the same. And for that Purpose, the said *John* brings the said Sum of ten Pounds into this Court to be paid to the said *Thomas*, if the said *Thomas* is willing to accept of the same; and this he is ready to verify; wherefore he prays Judgment, whether the said *Thomas* ought to have or maintain his said *Action* thereof against him, *and so forth*.

Replication thereto.

And the said *Thomas*, as to the said Sum of ten Pounds, Residue of the said Sum of fifteen Pounds, mentioned in the said first Promise in the said Declaration saith, that notwithstanding any thing above alleged by the said *John* in his said Plea, he the said *Thomas* ought not to be precluded from

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having his said Action thereof against him the said *John*, because he the said *Thomas* saith, that the said *John* did not tender to the said *Thomas* the said Sum of ten Pounds, in such Manner and Form as the said *John* hath above alledged in his Plea; and this he prays may be inquired of by the Country, and the said *John* prays likewise the same.

*A Plea of Payment to an Action for
Money due on a Bond.*

And the said *John* comes and defends the Force, Injury and Damages, and whatever else he ought to defend, when and where the Court will consider thereof, and craves Oyer of the said Writing Obligatory, (or of the said Bond, according as the Plaintiff calls it in his Declaration) and it is read to him, and so forth. He likewise craves Oyer of the Condition of the said Bond thereunder written; and it is read to him in these Words, (here recite the Condition which being read and heard, the said *John* says, that the said *Thomas* ought not to have his said Action against the said *John* because he saith, that after the making of the said Bond, and after the said 25th Day of July, mention'd in the said Condition, and before the issuing out of the Original Writ of the said *Thomas*, (that is to say) on the 20th Day of September, in the Year of our Lord one thousand seven hundred and thirty-two he the said *John* paid to the said *Thomas*

the said Sum of fifty Pounds mention'd in the said Condition, together with all Interest due thereon, according to the Form of the Statute in that Case made and provided; and this he is ready to verify; wherefore he prays Judgment, whether the said *Thomas* ought to have, or maintain his said Action against him, *and so forth.*

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This Plea of Payment was given by the Act of 4 & 5 of *Queen Anne*, cap. 16. for the Amendment of the Law, as mentioned among the Proceedings of the King's Bench.

The Form of making up Records, and of the Proceedings to Trial.

Pleas at Westminster, before Sir Robert Eyre, Placita. Knt. and his Companions Justices of the Bench of our Sovereign Lord the King of *Hillary Term*, in the sixth Year of the Reign of our said Sovereign Lord George the Second, King of Great Britain, France and Ireland, Defender of the Faith, *and so forth.*

Roll 67.

Norfolk. John Gooch, late of *Thetford*, in the said County of *Norfolk*, Gent. was attach'd to answer to *Thomas Hunt* of a Plea of *Trespass*, (or *Trespass on the Case*; and whereupon the said *Thomas* complains, that whereas, &c. *so go on to the End of the Declaration, and then begin the Plea thus:*

Declara-
tion.

And the said *Thomas*, by Robert Martin his Attorney, comes and defends the Force, Injury and Damages, and whatever else he ought to defend, when and where the Court will consider thereof; and saith, that he did not undertake in

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such Manner and Form as the said *Thomas* above complains against him; and of this *he puts himself upon his Country*; and the said *Thomas* doth likewise the same; therefore the Sheriff is commanded, that he cause twelve free and lawful Men of the Body of his County, every one of which to have ten Pounds a Year at least, of Lands, Tenements or Rents, by whom the Truth of the Matter may be the better known, to come here on the *Ostave of Saint Hillary*, and who are not related, either to the said *Thomas*, or the said *John*, to recognize and make a *Jury* of the Country between the said Parties of the *Plea* aforesaid; because as well the said *John*, as the said *Thomas*, between whom the Matter is in Dispute, have submitted themselves to the *Jury*.

If the Cause be not try'd of the same Term mention'd in the *Placita* above, then you must insert a new *Placita* between this and the following *Jurata*.

The Form of a Jurata.

Norfolk. A Jury is here respited till fifteen Days from the Feast-Day of *Easter*, between *Thomas Hunt* the Plaintiff, and the said *John Gooch*, late of *Thetford*, in the said County, Gent. of a *Plea* of *Trespasse upon the Case*, unless his Majesty's Justices appointed to hold the Assizes in the said County, should come before the 20th Day of *March*, at *Thetford* in the said County thro' Default of the Jurors; and because none of the Jurors may come, therefore let the Sheriff have the Bodies, and so forth. And be it known, that the Justices have delivered a Writ thereof here in this Court, this same Term to the Under-Sheriff

Sheriff of the same County, to be executed in due Form of Law. Common Pleas.

If it be thought proper to carry that Sentence to its full Length in the *Jurata* above, which is understood by the Words, *and so forth*, then it is thus :

Therefore let the Sheriff have the Bodies of *A. B. C. D. E. F. G. H. J. K. L. M.* and so on to the rest of the Jurors return'd in the Panel to the Venire Facias, before our Justices at *Westminster*, in fifteen Days from the Feast-Day of Easter, or before our Justices appointed to hold the Assizes in your County, if they should come before, on Monday the 20th Day of March next following, at *Thetford* in your County ; the above-mentioned Jurors having been summon'd in our Court, before our Justices at *Westminster*, to make a Jury between the said Parties, of a Plea, or in an Action of Trespas on the Case.

Before the late Act of Parliament of the Fifth of his present Majesty, the Names of the Jury were always expressed in the *Habeas Corpora*, and that was the Reason of this Entry ; but now the Names of the Jurors are not mentioned in the Body of the *Habeas Corpora*, but the Tenor of the Writ now is, that the Sheriff shall have the Bodies of the several Persons mention'd in the Panel annex't to that Writ, as may be seen hereafter in the Form of a Writ of *Habeas Corpora* ; and therefore I submit it, whether the Form of the above Entry may not now be shortned in this Manner.

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Therefore let the Sheriff have the Bodies of the several Persons by him return'd here to his Majesty's Justices, on his Majesty's Writ of *Venire Facias* to him directed, to summon a Jury between the said Parties of the Plea aforesaid, or I would rather say in the said Action.

If your *Jurata* be in *London*, then it is thus:

London. A Jury is here respited between *Thomas Hunt*, Plaintiff, and *John Gooch*, late of *London*, Gent. of a Plea of *Trespas upon the Case*, until (the very next Day after the Sittings,) if in Term; but if not in Term, then to the first Return of the next Term; as in fifteen Days from the Day of the Feast of *Easter*, unless *Sir Robert Eyre*, Knt. his Majesty's Chief Justice of the Common Bench, appointed to try and determine Causes, by Force of the Statute in such Case made and provided, should come before, on *Wednesday* the 14th Day of *February*, at *Guildhal*, *London*, thro' the Default of the Jurors: And as to the rest as in the former.

If in *Middlesex*, you say, unless *Sir Robert Eyre*, Knt. his Majesty's Chief Justice of the Common Bench, appointed to hear and determine the Matters in Variance, by Force of the Statute in such Case made and provided, should come there before on *Tuesday* the 13th Day of *February*, at *Westminster* aforesaid, in the great Hall of Pleas, commonly called *Westminster-Hall*, by the Default of the Jurors; and as to the rest as in the former.

The

*The Form of the Warrants of At-
torney.*

Norfolk. *Thomas Hunt* appoints in his Stead, *Robert Martin* his Attorney, against *John Gooch*, late of *Thetford*, in the said County Gent. in an Action of *Trespass upon the Case*.

Norfolk. *John Gooch*, late of *Thetford*, in the said County, Gent. appoints in his Stead *Henry Cockfedge* his Attorney, in the said Action.

The Form of a Venire.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth. To the Sheriff of *Norfolk* Greeting. We command you, that you Cause twelve free and lawful Men of the Body of your County, (every of which to have ten Pounds a Year at least in Lands, Tenements or Rents, by whom the Truth of the Matter will be the better known) to come before our Justices at *Westminster*, in fifteen Days from the Feast-Day of Easter, and who are in no ways related, either to the said *Thomas Hunt* the Plaintiff, or to the said *John Gooch* late of *Thetford*, in your County, Gent. to make a Jury of the Country, between the said Parties of a Plea of *Trespass upon the Case*, because, as well the said *Thomas*, as the said *John*, between whom the Matter is in Dispute, have submitted themselves to the Jury; and have you there the Names of the Jurors, and this Writ. Witness Sir *Robert Eyre*, Knt. at *Westminster*, the 12th Day of February, in the sixth Year of our Reign.

Borret.

The

Common
Pleas.*The Form of the Habeas Corpora.*

George the Second, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, and so forth, to the Sheriff of Norfolk, Greeting. We command you that you have the Bodies of the several Persons mentioned in the Panel annex'd to this Writ, before our Justices at *Westminster*, in fifteen Days from the Feast-Day of Easter; or before our Justices appointed to hold the Assizes in your County, by Force of the Statute in such Case made and provided, if they should come before, on Monday the 20th Day of March, at *Thetford* in your County, thro' the Default of the Jurors; the said Jurors having been summoned in our Court, before our Justices at *Westminster*, to make a Jury between *Thomas Hunt* Plaintiff, and *John Gooch*, late of *Thetford* in your County, Gentleman, of a Plea of *Trespass upon the Case*; and have you there this Writ. Witness Sir Robert Eyre, Knight, at *Westminster*, the twelfth Day of February, in the sixth Year of our Reign.

If your *Habeas Corpora* be in *London*, you only vary it in this Manner; instead of (*before our Justices appointed to take the Assizes in your County, &c.*) you say,

Or before Sir Robert Eyre, Knight, our Chief Justice, appointed to hear, try and determine Matters in Variance depending in our said Court of Common Bench, by Force of the Statute in such Case made and provided, shall come before on Thursday the 6th Day of February, (which must be the Day of the Sittings when you intend to try the Cause) at Guildhall, London,

London, thro' the Default of the Jurors. And then Common Pleas.
 you go on as before, Being Jurors summoned, &c.

Note, this Rule must be observed in Causes to be tried in London and Middlesex.

Your *Venire* must bear Teste on the first Day of the Term, on which *Issue* is joined; and returnable at a Return-Day before you try the Cause: And the Teste of your *Habeas Corpora* should be on the Return-Day of your *Venire*, and the Return thereof should be on a Return-Day after your Cause is to be tried; as for Instance, Suppose your Cause is to be tried at the third Sitting in *Hillary* Term, which we will suppose to be on the fourth of *February*; your *Venire* must bear Teste the 23d Day of *January*, and be returnable in fifteen Days from the Day of *St. Hillary*; and your *Habeas Corpora* will bear Teste on the 31st Day of *January*, and must be returnable on the Octave of the Purification of the blessed *Virgin Mary*. And tho' originally at Common Law there was to be fifteen Days between the Teste and the Return of every Writ, yet by the Statute of the 13th of *K. Charles the Second*, cap. 2. sect. 6. reciting, that many Suits commenced by original Writs had been protracted, and long delayed from Judgment and Execution, by Reason of the Necessity of having fifteen Days at least between the Days

Common Days of the Teste and the Days of Return
 Pleas. of Writs then used in Personal Actions, and
 also in Actions of Ejectment for Lands and
 Tenements, for Remedy thereof, and for
 the more easy expediting Trials, and for the
 more speedy executing of Judgments, for
 the Time then to come, It was enacted,
 * That in all Actions of Debt, and all other
 * Personal Actions whatsoever, and also in
 * all Actions of Ejectment for Lands and
 * Tenements then depending ; or which
 * at any Time then after should depend
 * by original Writ, in either of his Maje-
 * sty's Courts aforesaid, after any Issue there-
 * in joined to be tried by a Jury, and also
 * any Judgment had or obtained, or to be
 * had or obtained in either of the Courts a-
 * fforesaid, in any such Action as aforesaid,
 * there should not need to be fifteen Days
 * between the Teste-Day and the Day of
 * the Return of any Writ or Writs of *Venire*
 * *facias*, *Habeas Corpora Furatorum*, or
 * *Distingas Furatores* ; Writs of *Fieri*
 * *facias*, or Writs of *Capias ad Satisfacien-*
 * *dum* ; and that the Want of fifteen Days
 * between the Teste-Day and the Day of the
 * Return of any such Writ, should not be
 * assigned for, or taken or adjudged to be
 * Error ; any Law, Custom, Statute or U-
 * sage to the contrary thereof in any wise
 * notwithstanding.

And it may not be amiss to explain what
 is meant in the Award of the several Writs
 of *Habeas Corpora* and *Distingas*, by the
 Sheriffs being commanded to have the Bo-

dies

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lies of the Jurors before the Judges of the Court from whence the respective Proceſſes ſſues, on the next Return-Day after the Cauſe is tried, unleſs (if in London or Middleſex, the Chief Juſtice of the reſpective Courts, or if at the Aſſizes) The Juſtices appointed to hold the Aſſizes at ſuch a Place, in ſuch a County, ſhould come before, that is, before the Return of the *Habeas Corpora* or *Distringas*, there at the Aſſizes thro' the Default of the Jurors.

In order to underſtand which it is neceſſary to ſhew, that before the Statute of *Magna Charta*, Aſſizes were only to be taken in the Court of *Common Pleas*, or before the Juſtices in *Eyre*, which occaſioned great Delay to the Plaintiffs. And by that Statute v. *Magna Charta*, cap. 30. 2. Inſt. it was provided that the Aſſizes ſhould be taken in the proper County, once every Year. So that my Lord Coke ſays in his 4 Inſt. 158. that no Aſſizes by this Statute could be returnable in the *King's Bench* or *Common Pleas*, unleſs the Diſſeiſin had been made in the County where the Benches ſat; and if both Benches ſat in the ſame County, then the Plaintiff was at Liberty to make his Writ returnable either in the *King's Bench* or *Common Pleas*; and he ſays further, that in that Caſe it appears that the Juſtices of both Benches had original Jurisdiction ordinarily, without any Patent.

But Trials by *Niſi prius* were firſt inſtituted by the Statute of *Westminster* 2. and the

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the Authority for that Purpose is annexed to *Justices of Assize*, by Force of a *Judicial Writ*. And by this last mentioned Statute that Remedy provided by *Magna Charta* was thought too Short ; and therefore by the Statute of *Westm. 2.* they were appointed to be taken three Times a Year. The first was between the fifteenth Day of the Feast of *St. John the Baptist* and the Gule of *August*, by which is meant the Feast of *St. Peter ad Vincula*, which is the 1st of *August*, and the second was between the Feast of the *Exaltation of the holy Cross* and the *Utas*, (or the *Octave*) of *St. Michael* ; and the third was between the Feast of the *Epiphany* and the Feast of the *Purification of the Blessed Virgin Mary*.

It would be too tedious here to mention the several Remedies provided by this Statute, and the several Alterations that have been made as to holding the *Assizes* ; therefore I shall omit it, and only explain what is meant by the Sheriffs being commanded to have the *Jury* before the *King*, if in the *King's Bench*, or if in the *Common Pleas*, before the *Justices* at *Westminster*, at such a Day, which if the Cause is tried in *Term*, is the next *Return-Day* after-wards, if at the *Assizes*, at the first *Return* in the subsequent *Term*, or before the respective *Chief Justice* if in *London* or *Middlesex* ; but if at the *Assizes*, or before his Majesty's *Justices* appointed to hold the *Assizes*, according to the Form of the Statute in that Case made and provided, if they should come before,

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before, (that is before the Day of the Return of the Habeas Corpora, or Distringas) at such a Day and Place, (viz.) when and where the Sittings or the Assizes are to be held thro' Default of the Jurors.

The Jurors are obliged by the *Venire* to come before the Judges of the respective Courts out of which it issues, at the Return thereof to recognize, as has been said before, and try whether what was contained in the Issue, was on the Part of the Plaintiff or Defendant true. If the Jury comes not there upon the Return of the *Venire* for that Purpose, then they are *Defaulters*; and the Judges being obliged to try the Cause at *Nisi prius*, upon this further Process of a *Habeas Corpora* or *Distringas*, is thro' the Default of the *Jurors*.

And therefore the Award of these Writs being with the Word *Nisi*, and the Writs themselves with the Word *Si*, may be, I think, easily reconciled; for the Award of a *Distringas* is an Entry signifying, that inasmuch as the *Jury* did not appear at the Return of the *Venire* to try the Cause; therefore they are respited until such a Day, which is the Return of the *Habeas Corpora* or *Distringas*; unless the Judges appointed to hold the Assizes at such a Place, should come there before the Return of the *Habeas Corpora* or *Distringas*, to try the Cause thro' the Default of the *Jurors* not having been at the Day and Place where the *Venire* was returnable for that Purpose; and then the Entry goes on further, let the Sheriff therefore

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therefore have their Bodies, (that is) if the Judge should come at the *Sittings*, or at the *Affizes*, and the Jurors should again make Default) before the Judges of the Court, out of which the Process issues at the Day of the Return thereof.

And the Reason of a new *Placita* used in the *King's Bench*, I apprehend to be very plain, because the other *Placita* is supposed to have been made use of when the Cause would have been tried before, at the Return of the *Venire*, but thro' the Default of the *Jurors*.

And therefore before there is an Entry of a *Jurata*, which is the Award of the *Distringas*, it is thought convenient that there should be a new *Placita* to signify that the Cause is again brought on to be tried, which would have been tried before at the Return of the *Venire*, but for the Default of the *Jurors* in not being there.

And when the Writ itself is made out, pursuant to such Award by the Court, it would be inconsistent to make use of the Word *Nisi* there, because by the Writ the Sheriff is commanded to have the Bodies of the *Jurors* at the Day of the Return, or before the Judges at the *Affizes*, if they should come there before such Return, at such a Day thro' the Default of the *Jurors*: For as has been said, whenever they come to try a Cause upon a *Distringas*, or a *Habeas Corpora*, it is for the Default of the *Jurors* not having come before.

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If the Jurors do come at the Assizes and try the Cause, then the *Postea*, which is the Return of the Writ of *Nisi prius*, takes Notice of their having been there, and what was done thereon; and the *Fury* are discharged, and the Entry of their having been respited, is no more than as being consonant to the Writ which commands the Sheriff to have them at *Westminster*, or wherever the Writ is returnable, lest they should not have come to do Justice to their Country; and that there may be a Continuance of the Process, that upon their further Default, if there had been any, a new Process might have issued to compel them to come.

The Form of a Subpœna for Witnesses.

George the Second, &c. To A. B. C. D. E. F. and G. H. Greeting. We command you and every of you (hereby firmly enjoining you, that you lay aside all Manner of Excuses and Delays whatsoever) that you be in your proper Persons before our Justices appointed to take the Assizes to be held at *Thetford*, in the County of *Norfolk*, on (*such a Day*) being the Day of the Assizes next following, to testify and declare the Truth in a certain Matter in Variance, depending in our Court before our Justices at *Westminster*, in an Action of Trespass upon the Case undetermined, between *Thomas Hunt* Plaintiff, and *John Gooch*, late of *Thetford* in the County of *Norfolk*, Gentleman, Defendant; and this you, nor either of you are in no wise to omit, under the Penalty of One Hundred Pounds, to be had of you and every of you. Witness Sir *Robert Eyre*, Knight, the twelfth Day of *February* in the sixth Year of our Reign.

H

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If the Cause be in *London*, then you say,

That you be before Sir *Robert Eyre*, Knt. our Chief Justice of the Common Bench, at *Guildhall*, in *London*, on *Wednesday* the 14th Day of *February*, now next to come, to testify, &c.

If in *Middlesex*, then you say,

Before Sir *Robert Eyre*, Knight, our Chief Justice of the Common Bench, on *Tuesday* the 13th Day of *February*, now next ensuing, at *Westminster*, at the great Hall of Pleas, commonly called *Westminster Hall*, to testify, and declare, &c.

The Form of a Ticket is thus.

Mr. *A. B.*

By Virtue of a Writ of *Subpoena* to you directed, and herewith shewn unto you, you are Personally to be and appear before his Majesty's Justices of Assize, on — next, being the — Day of — at — of the Clock in the — noon of the same Day, at the Court then to be holden, at — to testify the Truth according to your Knowledge, in a certain Cause now depending, and then and there to be tried, between *Thomas Hunt* Plaintiff, and *John Gooch* Gentleman, Defendant, in a Plea of *Trespas* upon the Case, on the Part of — And thereof you are not to fail, on Pain of one Hundred Pounds, dated the — Day of — in the sixth Year of the Reign of our Sovereign Lord *George* the Second, by the Grace of God, of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth, and in the Year of our Lord one Thousand seven Hundred and Thirty-two.

The

The Form of a Postea.

Afterwards on the Day, and at the Place within contained, the within named *Thomas Hunt*, by his Attorney within named, came before Sir *Robert Eyre*, Knt. Chief Justice to our Sovereign Lord the King, of his *Common Bench*, Sir *John Fortescue Aland*, Knight, one of his said Majesty's Justices of the said *Common Bench*, Justices of our Sovereign Lord the King, appointed to hold the Assizes for the County of *Suffolk*, and the within named *John Gooch*, altho' solemnly required, came not there, but made default: Therefore let the Jury, whereof Mention is made within, be accepted of against him by his Default; whereupon, the Jurors summon'd to be upon that Jury, some of them, (that is to say) *Francis Scotchmere*, *John Howard*, *Henry Brittain*, *Phineas Todd*, (so naming the rest that appeared,) came, and were sworn upon that Jury: And because the Remainder of the Jurors of that Jury have not appeared, therefore others of Circumstances are by the Sheriff of the County aforesaid, at the Request of the said *Thomas Hunt*, and by the Command of the said Justices, put on a-fresh, whose Names are in the within written Panel, to be assiled according to the Statute in such Case made and provided; which said Jury so newly put on, (that is to say) *Henry York*, and *Robert York*, who being summon'd likewise came to declare the Truth of the within Contents, together with the other Jurors before impanell'd and sworn, and being chosen, try'd and sworn, declare upon their Oaths, that the said *John* did undertake, in the Manner and Form, as the said *Thomas* within complains against him: And they assess the said *Thomas Hunt's* Damages, occasioned by the said within Contents, besides his

Expences

Common Pleas. Expences and Costs laid out by him in this behalf to twenty-two Pounds, and for his Expences and Costs to forty Shillings.

The Meaning of the Words, *therefore let the Jury be accepted of against him by his Default*, is when a Cause is called on, and the *Plaintiff* and *Defendant* are called; if the *Defendant* does not answer, or say any Thing, when the Panel is call'd over by way of *Challenge* to the *Array* or to the *Poll*; Then the Court proceeds on to swear the *Jury*, and the *Defendant* not appearing to the Panel, the Cause is tried, and the Entry upon the *Postea* suggests, that the *Defendant*, tho' solemnly requir'd did not come, but made *Default*; therefore the *Jury* are taken, or more properly accepted of by the Court, thro' the *Defendant's Default*; tho' in Truth, the *Defendant* and his Attorney might be there ready at the first Calling of the Cause, yet the *Associate* makes the Entry in that Manner, that the *Defendant* made *Default*; but the best Reason I can give for it is, that the *Cryer* and *Associate* have two Shillings a piece for the *Default*, (tho' in Truth, none ever made, and the Entry is so drawn up to warrant that Fee.

Therefore the Author of a late Treatise, said to be Instructions for Clerks and Practisers of the *King's Bench* and *Common Pleas*, quite mistakes the Matter, when he translates the Entry; *Therefore let a Verdict of the Jury be taken against him by Default*,

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Default, and he carries his Mistake farther, when he tells us, that "this is the Form of a *Postea*, where the *Verdict* is for the *Plaintiff* by the *Defendant's Default*, (that is, says he) where the *Defendant*, after the Jury are ready to give their *Verdict*, doth not appear on his being called, knowing that the *Verdict* will certainly pass against him;" so far is that from Truth, if he would have look'd into the Entries, he would have found, that notwithstanding this Entry of the *Jury* being taken or accepted of by the Court, against him thro' his *Default*, yet the *Defendant* may give Evidence in the Cause, and obtain a *Verdict* against the *Plaintiff* in the same Manner, as if he had appeared when the Panel was called over, and that he lost no other Advantage thereby, but that he could not challenge any of the *Jurors*; and therefore the Jury are taken and accepted of, to try the Cause, by his Default of not appearing, when the Panel was call'd over. In *Lutwich* 783. *Sleigh* and *Metham*, there the Entry is, that the Jury may be accepted of against the *Defendant*, thro' his Default, tho' there was a vigorous Defence made for the *Defendant*; so in the Case of *North* and *Lad*, *Lut.* 756. there is the same Entry, that the Jury shall be accepted of against the *Defendant*, thro' his Default, where Part was found for the *Plaintiff*, and a special *Verdict* as to the rest; upon which Judgment was given for the *Defendant*; so in 1 *Saunders* 245. *Craft* against *Boite*,

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Boite, there is the same Entry, and a Defence made at the Trial; so that to imagine that this Entry, *quod Jurata capiatur versus eum per Defalt'*, is only where the Defendant makes no Defence at the Trial, is wrong, and to translate the Words, *Jurata capiatur versus eum per Defalt'*, that the Verdict shall be taken against him by his Default, is, for want of Understanding the Entry in *Latin*; which I think a Man should always do before he translates it into *English*, or else the Reader may be led into Errors, that he may not easily get rid of, when he finds it in a Book of so good Authority, as this Instruction to Clerks and Practisers seems to be.

A Writ of Inquiry.

GEORGE the Second, by the Grace of God, King of Great Britain, France and Ireland, Defender of the Faith, and so forth, to the Sheriffs of London, Greeting. Whereas *A. B.* late of *E.* in your County, Yeoman, had been attach'd to appear in our Court, before our Justices at *Westminster*, to answer to *C. D.* of a Plea, that whereas (*so go on with your Declaration to the Words to the Damage of the said C. twenty Pounds, as it is said*) and such Proceedings are had thereon in our Court, that the said *C.* ought to recover his Damages by reason of the Premises, (*this is said to be most proper where it is for Words or Torts*) and if in Assumpfit, his Damages occasion'd for not performing several Promises and Undertakings made by the said *A.* to the said *C.* But because it is not known what Damages the said *C.* hath sustain'd by reason of the Premises, (or of the not performing

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Pleas.

performing the said several Promises and Under-
takings *We command you*, that by the Oath of
twelve honest and lawful Men of your County, you
diligently inquire what *Damages* the said C. hath
sustained, as well by reason of the Premises, (or of
not performing the said several Promises and Under-
takings) as for his *Expences* and *Costs* laid out by
him about his Suit in this Cause. And the *Inqui-*
sition which you shall make thereon, do you make
apparent to our Justices at *Westminster*, on the Oc-
casion of the Purification of the Blessed Virgin Mary,
Under your Seal, and the Seals of those by whose
Oaths you shall take such *Inquisition*. And have
you there the Names of those by whose Oaths you
shall take the said *Inquisition*; and this Writ. Wit-
ness, Sir Robert Eyre, Knt. at *Westminster*, the
twenty-third Day of *January*, in the sixth Year of
our Reign.

*A Writ of Inquiry where the Plaintiff
died after Judgment, and before the
Writ of Inquiry.*

GEORGE the Second, &c. To the Sheriff of
Middlesex, Greeting. Whereas *E. P.* Widow, (Ex-
ecutrix of the last Will and Testament of *M. P.*
her late Husband deceased, late one of the Attor-
neys of this Court) in the Term of the *Holy Trinity*,
last past, prosecuted out of our Court of Common
Bench, against *A. B.* late of *London*, Distiller, our
Writ of *Capias*, returnable in our said Court of
Common Bench, before our Justices of the same,
a Plea of *Trespas* upon the Case; to which
said Writ the said *A.* appeared at the Return of the
said Writ; and thereupon the said *E.* as Execu-
trix of the said last Will and Testament of the
said *M.* her said late Husband deceased, declared
F against

Common against the said *A.* in *Michaelmas* Term last, in
 Pleas. this our said Court of Common Bench; for that
 whereas, (and so go on with the Declaration; and
 thereupon such Proceedings were had, that it was
 consider'd here in our said Court of Common Bench,
 by our Justices of the same Court, that the said *E.*
 ought to recover her *Damages*, occasion'd by the
 not performing of the said several Promises and Un-
 dertakings made by the said *A.* to the said *M.* in
 his Life-time, in the Form aforesaid. But because
 it was not known what *Damages* the said *E.* had
 sustained, by reason of the Premises; Therefore we
 commanded you, that by the Oaths of twelve honest
 and lawful Men of your County, you should dili-
 gently inquire what *Damages* the said *E.* had sus-
 tained, as well by Reason of the Premises, as for
 her *Expences* and *Costs*, laid out by her about her
 Suit in that Behalf. And that the *Inquisition* which
 you should take thereon, you should cause to be
 before our said Justices of our said Common Bench
 at *Westminster*, on the *Morrow* of *St. Martin*, under
 your Seal, and the Seals of those, by whose Oaths
 you should take such *Inquisition*, as by the Record
 and Proceedings thereon, now remaining in our said
 Court of Common Bench, before our said Justices
 at *Westminster*, manifestly may appear. Neverthe-
 less an *Inquiry* of the said *Damages* yet remains to
 be made: And the said *E.* is now dead, as we
 have received Information from *R. B.* Administra-
 tor of all and singular the Goods and Chattles,
 Rights and Credits, which were of, and belong'd
 to the said *M.* at the Time of his Death un-
 administred by the said *E.* And therefore at the Instance
 of the said *R.* in our said Court, before our said
 Justices at *Westminster*, by our Writ of *Scire Facias*,
 issuing out of this our said Court of Common
 Bench, we lately commanded you, that by honest
 and lawful Men of your Bailiwick, you should
 cause

Common
Pleas.

use it to be known to the said R. that he was to
 have been before our said Justices of this our said
 Court of Common Bench at *Westminster*, in fifteen
 days of *St. Martin*, to shew Cause, if he knew of,
 had any thing to say for himself, why the said
 should not recover the said *Damages*, by rea-
 son of the Premises against the said A. according to
 the Form of the Statute in such Case made and
 provided, if the said A. thought it Expedient so to
 do. At which Day the said R. came into our said
 Court, before our said Justices at *Westminster*; and
 our said Sheriff at the same Day, made a Re-
 turn to our said Writ, that by E. S. and J. R.
 honest and lawful Men of your Bailiwick, you had
 used it to be known to the said R. that he should
 have been before our said Justices at *Westminster*,
 the Day and Place aforesaid, to have shewn
 Cause in Form aforesaid, if he had thought it Ex-
 pedient for him so to have done, as by our said Writ
 was commanded to do; which said R. being so
 named, and solemnly required, did not come at
 the Day but made Default; whereby it was con-
 sidered in our said Court of Common Bench, by
 the Justices of the same, that the said R. ought to
 recover the said *Damages* by reason of the Premises.
 because it is Unknown what *Damages* had been
 claimed by the said E. by reason of the Premises;
 therefore we command you, that by the Oaths of
 twelve honest and lawful Men of your Baliwick,
 to diligently inquire what *Damages* the said E.
 claimed, as well by reason of the Premises, as for
 her Expences and Costs, laid out by her about her
 Suit in that Behalf. And the Inquisition which you
 shall take thereupon, do you make appear before
 our said Justices of our said Court of Common
 Bench at *Westminster*, on the Octave of *St. Hillary*,
 under your Seal, and the Seals of those, by whose
 Oaths you shall make such Inquisition, and have

Common Pleas. you there likewise the Names of those Persons whose Oaths you take such *Inquisition*, and the Writ. Witness Sir Robert Eyre, &c.

A Capias ad satisfaciendum.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting. We command you, that you take *A. B.* late of *Westminster*, in your County of *Essex*; if he is to be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at *Westminster*, on the *Octave* of the *Purification of the Blessed Virgin Mary*, to make Satisfaction to *C. D.* for ten Pounds, which in our Court, before our Justices at *Westminster*, were awarded to *C. D.* for his Damages which he sustained, by reason of a certain *Trespas* upon the Case, committed by the said *A.* to the said *C.* at *Westminster* aforesaid, in your County; if it be in an Action upon the Case upon an *Assumpsit*, then for his Damages which he has sustained, by reason of not performing several Promises and Undertakings made by the said *A.* to the said *C.* at *Westminster* aforesaid, in your County, whereof he is convicted and have you there this Writ. Witness Sir Robert Eyre, at *Westminster*, the 23d Day of *January*, the sixth Year of our Reign.

If in Covenant.

For his Damages which he sustained by reason of a certain Covenant, (or of certain Covenants made between them, according to the Form and Effect of a certain *Indenture*, (or certain Articles, as the Case is) made at *Westminster*, in your County, and broken by the said *A.* (then as in the former).

Common
Pleas.*If in Trespass and Assault.*

For his *Damages* which he sustained by reason of a certain *Trespass* and *Assault*, (or *Trespass*, *Assault* and *Imprisonment*, as the Case is) committed by the said *A.* against the said *C.* against our Peace at *M.* in your County, whereof he is convicted, (then as in the Former.)

Upon a Nonsuit in Case.

To make Satisfaction to *A. B.* late of *W.* in our County for one hundred Shillings, which in our Court before our Justices at *Westminster*, were awarded to the said *A.* by the Discretion of our same Justices, according to the Form of the Statute lately made and provided against Parties, Plaintiffs, who should not prosecute their Writs, and proceed in the same, for his *Expences* and *Costs*, which he sustain'd by *C. D.*'s not proceeding on his Writ, in a certain Plea of *Trespass on the Case*, prosecuted and sued out by the said *C. D.* against the said *A.* in our same Court; and have you there this Writ. Witness, &c.

Another Form.

For his *Expences* and *Costs* which he laid out, by reason of a *groundless Claim* of *C. D.* in a certain Plea of *Debt*, upon a Demand of twenty pounds, prosecuted by the said *C.* against the said *A.* whereof the said *C.* is convicted; and have you there this Writ.

Common
Pleas.*If in Ejectment.*

In a certain Plea of *Trespass* and *Ejectment* wherein the said C. proceeds no further on his Writ thereof against the said A. whereof he is convicted.

If in Debt.

To make Satisfaction to C. D. as well for Debt of twenty Pounds, which the said C. hath lately recovered against him in our Court before our Justices at *Westminster*; as also for fifty Shillings, which, in our same Court were awarded to the said C. for his Damages which he had sustained by reason of his detaining the said Debt, where the said A. is convicted. And have you then this Writ. Witness, &c.

If it be against an Executor de bonis propriis, after a Devastavit return'd, then thus:

We command you, that you take A. B. late of *Thetford*, in your County, *Clothworker*, Executor of the last Will and Testament of C. T. if he should be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at *Westminster*, on the *Morrow of the Purification of the Blessed Virgin Mary*, to make Satisfaction to C. D. as well for a Debt of twenty Pounds which the said C. hath recovered against him in our Court, before our Justices at *Westminster*; as for fifty Shillings, which in our same Court were awarded to the said C. for his Damages which he had sustained, by reason of detaining the said Debt whereof he is convicted. And whereupon it is considered in our same Court, that the said C. ought to have an Execution against the said A. Executor

Common
Pleas.

as afore said, for the said *Debt* and *Damages* to be levied of the proper Goods and Chattles of the said *A.* because the said *A.* hath wasted, converted, and disposed of to his own Use, divers Goods and Chattles, which were of, and belong'd to the said *E. T.* the Testator at the Time of his Death, which came to the Hands of the said *A.* after the Death of the said *E.* to be administred, to the Value of the said *Debt* and *Damages*, as you your self, on the *Octave of St. Hillary* last past, returned to our Justices at *Westminster*. And have you there this Writ. Witness, &c.

A Testatum Ca. Sa.

As in the first Ca. Sa. here inserted, to the Words, whereof he is convicted, *and then you say,* And whereof our Sheriff of *Suffolk* hath returned (or made a Return) to our Justices at *Westminster*, on the *Octave of St. Hillary* last past, that the said *A.* is not to be found in his Bailiwick. And in as much as it is sufficiently testified in our same Court, that he sturks and wanders up and down in your County. And have you there this Writ. Witness, &c.

A Non omittas Ca. Sa.

We command you omit not, by means of the Liberty of *St. Etheldred* in your County, but enter therein, and take *A. B. and so on, as in the Former,* to the Words whereof he is convicted; and whereupon you your self have return'd (or made a Return to our Justices at *Westminster*, on the *Octave of St. Hillary* last past, and some say only (at a certain Day now past (that in order to have the said Writ duly executed, you had sent to the Bailiff of the said Liberty of *St. Etheldred* in your County, who hath

Common Pleas. the full Power of returning of all *Writs* and Precepts and of the *Execution* of the same within the said *Liberty*, for that you could not execute the said *Writ* in your County out of the said *Liberty*, (which said Bailiff had given you no manner of Answer thereto) And have you there this *Writ*.

A Testatum Non omittas Ca. Sa. is no more than by beginning the *Writ* as before, and adding the Words belonging to the *Testat* and *Non omittas* after it.

A Capias ad satisfaciendum for an Executor in Debt, upon a Judgment by Default after a Sci. Fa.

GEORGE the Second, &c. (as in the *Ca. Sa.* in *Debt*) only you say, to make Satisfaction to *C. D.* Widow, *Executrix* of the last Will and Testament of *W. C.* as well for a *Debt* of twenty Pounds which the said *W.* in his Life-time recovered against him, before our Justices at *Westminster*, as also for fifty Shillings, which in our same Court were awarded to the said *W.* in his Life-time, for his Damages which he sustained by reason of detaining his said *Debt* whereof he is convicted: And whereupon it is consider'd in our same Court, that the said *C.* ought to have an *Execution* against the said *A.* for the said *Debt* and Damages by his Default And have you there this *Writ*. Witness, &c.

A Capias

Common
Pleas.

*A Capias ad satisfaciendum, for the
Residue of a Debt and Damages, Part
having been levied by a Fieri facias.*

GEORGE the Second, &c. To the Sheriff of
Suffolk, Greeting. Whereas we lately commanded
you, that you should cause to be made of the Goods
and Chattels of *A. B.* late of *Stowmarket*, in your
County, *Hofier*, as well a certain Debt of twenty
Pounds, which *C. D.* had recovered against him in
our Court before our Justices at *Westminster*; as al-
so sixty Shillings, which in our same Court were
awarded to the said *C.* for his Damages which
he had sustained, by reason of detaining his said
Debt; And that you should have the Money be-
fore our Justices at *Westminster*, in fifteen Days from
the Day of *St. Martin*, to render to the said *C.* for
his said Debt and Damages, whereof the said *A.* is
convicted, and you yourself return'd (or made a Re-
turn) to our Justices at *Westminster*, at that Day that
you had caused to be made, the Sum of ten Pounds,
of the said Goods and Chattels of the said *A.* and
that you had the Money ready at the Day and
Place aforesaid; and that the said *A.* had no other,
or any more Goods and Chattels in your Bailiwick,
whereby you could cause to be made or levied the
Residue of the said Debt and Damages, as you
had been commanded by the said Writ; therefore
we command you, that you take the said *A.* if he
should be found in your Bailiwick, and safely keep
him, so that you have his Body before our Justices
at *Westminster* on the Octave of *St. Hillary*, to make
Satisfaction to the said *C.* for the Residue of the
said Debt and Damages; and have you there this
Writ. Witness, &c.

The ATTORNEY'S

*A Fieri Facias upon Promises un-
performed.*

GEORGE the Second, &c. To the Sheriff of Suffolk, Greeting. We Command you, that you cause to be made of the Goods and Chattles of *A. B.* late of *Stowmarket*, in your County, Yeoman, in your Bailiwick, twenty Pounds, which in our Court, before our Justices at *Westminster*, were awarded to *C. D.* for his Damages which he sustained, by reason of not performing certain Promises and Undertakings made by the said *A.* to the said *C.* at *St. Edmunds-Bury* in your County; and have you the Money before our Justices at *Westminster*, on the *Octave of St. Hillary*, to render to the said *C.* for his said Damages, *whereof the said A. is convicted*; and have you there this Writ. Witness, &c.

For Words.

For his Damages which he sustained, by reason of speaking, and publishing certain scandalous Words by the said *A.* of the said *C.* at *St. Edmunds-Bury* in your County, whereof the said *A.* is convicted, &c.

If in Covenant.

For his Damages which he sustained, by reason of the Breach of a certain Covenant, (or Covenants, as the Case is) made between the said *C.* and the said *A.* according to the Force, Form, and Effect of certain Articles (or of certain Indentures, as the Case is) made at *St. Edmunds-Bury* in your County, whereof the said *A.* is convicted, &c.

If

If in Ejectment.

For his *Damages* which he sustained by Reason of a certain *Trespass and Ejectment*, committed by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your County, with Force and Arms against our Peace, whereof the said *A.* is convicted, &c.

If in Replevin.

By Reason of taking and unjustly detaining Cattle of the said *C.* at *St. Edmunds-Bury*, in a certain Place there called *G.* whereof he is convicted.

If in Trespass.

For his *Damages* which he sustained by Reason of a certain *Trespass* committed with Force and Arms, and against our Peace, by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your County, whereof he is convicted, &c.

If in Debt.

We command you, that you cause to be made of the Goods and Chattles of *A. B.* late of *Ipswich* in your County, Yeoman, in your Bailiwick, as well a certain *Debt* of forty Pounds which *C. D.* hath recovered against him, in our Court, before our Justices at *Westminster*, as also forty Shillings which in our same Court were awarded to the said *C.* for his *Damages*, which he sustained by Reason of delaying his said Debt, whereof the said *A.* is convicted.

Common
Pleas.

A Testatum fieri facias in Debt.

Whereof he is convicted : And inasmuch as our Sheriff of *Norfolk* hath returned, (or made a Return) to our Justices at *Westminster*, at a certain Day now past, that the said *A.* had no Goods or Chattels in his Bailiwick, whereof the said Debt and Damages, or any Part thereof, could be made or levied. *Whereas it is testified* in our Court, that the said *A.* hath sufficient Goods and Chattels in your Bailiwick, whereof the said Debt and Damages may be made and levied ; and have you there this Writ. *Witness, &c.*

A Non Omittas Fieri facias.

George the Second, &c. To the Sheriff of *Suffolk*, Greeting. We command you, that you omit not, by means of the Liberty of *St. Etheldred* in your County, but that you enter therein and Cause to be made of the Goods and Chattels of *A. B.* late of *St. Edmunds-Bury* in your County, *Hofier*, within the said Liberty, as well a certain Debt of one Hundred Pounds, which *C. D.* hath recovered against him in our Court, before our Justices at *Westminster*, as also fifty Shillings, which in our same Court were awarded to the said *C.* for his Damages which he sustained by Reason of detaining the said Debt. And have you the Money before our Justices at *Westminster*, on the *Octave of St. Hillary*, to render to the said *C.* for his Debt and Damages aforesaid ; inasmuch as you yourself have returned, (or made a Return) to our Justices at *Westminster*, at a certain Day now past ; that in order to have a due Execution of the said Writ to you directed, you had sent to the *Bailiff* of the said Liberty,

Liberty, who had full Power of executing and returning all *Writs* within the said *Liberty*; and that the said *Writ* could not be executed in your County, out of the said *Liberty*, (which said *Bailiff* had given you no Answer thereto); and have you there this *Writ*. *Witness*, &c.

Common
Pleas.

A Testatum Fieri facias against an Executor, after a former Testatum had issued, and nulla bona returned after a Devastavit.

George the Second, &c. To the Sheriff of Norfolk, Greeting. Whereas we commanded our Sheriff of *Middlesex*, that of the Goods and Chattels which were of and belonged to *C. B. Gentleman*, lately called *C. B. of the Parish of St. Martins in the Fields*, in the same County of *Middlesex*, Gentleman, at the Time of his Death, in the Hands of *W. J.* late of the *Parish of St. Clements Danes*, in the said County of *Middlesex*, *Hofser*, and *Anne* his Wife, Executrix of the last Will and Testament of the said *C.* unadministered, he should cause to be made as well a certain Debt of one Hundred and ten Pounds, which *T. F. Administrator* of all and singular the Goods and Chattels of *P. W.* who died intestate, recovered in our Court, before our Justices at *Westminster*, against them; as also seven Pounds and ten Shillings, which in our same Court were awarded to the said *E. T.* for his Damages which he sustained by Reason of detaining the said Debt, to be levied of the Goods and Chattels which were of, and belonged to the said *C.* at the Time of his Death, in the Hands of the said *W. J.* and *Anne* his Wife, unadministered; if they had so many Goods and Chattels which were of and belonged to the said *C. D.* at the Time of his Death,

Common
Pleas.

Death, in their Hands unadministered : If they had not so many, then the said *Damages* to be levied of the proper Goods and Chattles of the said *W.* *J.* and that he should have the Money there before our Justices at *Westminster*, in three Weeks from the Day of *St. Michael*, and that Writ. And whereupon our said Sheriff of *Middlesex* at that Day, made a Return to our Justices at *Westminster*, that before that Writ came to him, directed as aforesaid, the said *William* and *Anne* had wasted, converted and disposed of to their own Use, divers Goods and Chattels which were of and belonged to the said *C.* at the Time of his Death, to the Value of fifty Pounds. And further our said Sheriff of *Middlesex* returned, that the said *William* and *Jane* had not any Goods and Chattels which were of and belonged to the said *C.* at the Time of his Death, in his Bailiwick ; whereby the said *Debt*, or any Part thereof, could be levied ; nor had they any Goods or Chattels of their own in his Bailiwick, whereby the said *Damages*, or any Part thereof, could be levied, as by the said Writ he was commanded. And thereupon it having been testified in our Court, before our Justices at *Westminster*, that the said *W.* and *J.* had sufficient Goods and Chattels of their own in *London*, whereof the said fifty Pounds of the said *Debt* and *Damages* might be made and levied ; We therefore commanded our Sheriffs of *London*, that they should cause to be made of the said proper Goods and Chattels of the said *W.* and *A.* in their Bailiwick, the said fifty Pounds of the said *Debt* and *Damages* ; and that they should have the Money before our Justices at *Westminster*, in fifteen Days from the Day of *St. Martin*, to render to the said *E.* towards her *Debt* and *Damages* aforesaid. Whereupon our said Sheriffs of *London*, at that Day made a Return to our Justices at *Westminster*, that the said *W.* and *J.* had not any Goods or Chattels in their Bailiwick,

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liwick, whereby the said *fifty Pounds* of the said *Common Debt and Damages*, or any Part thereof could be *Pleas.* made or levied. *And whereas* it is *sufficiently testi-* fied in our said Court, before our said Justices at *Westminster*, that the said *W.* and *J.* have sufficient Goods and Chattels in your County, whereof the said *fifty Pounds* of the said *Debt and Damages* may be made and levied ; *Therefore we command you*, that of the Goods and Chattels of the said *W.* and *J.* in your Bailiwick, you cause to be made the said *fifty Pounds* of the said *Debt and Damages*, and have you the Money before our Justices at *Westminster*, on the *Octave of St. Hillary*, to render to the said *E.* in Form aforesaid, and this Writ. *Witness*, &c.

If it be against an Administrator without a Devastavit, then you say,

We command you, that of the Goods and Chattels which were of and belonged to *R. G.* at the Time of his Death, who died intestate, in the Hands of *A. B.* Widow, Administratrix of all and singular the Goods and Chattels, which were of the said *R.* in your Bailiwick, you cause to be made as well a certain Debt of fifty Pounds, which *J. S.* Gentleman, hath recovered against her in our Court before our Justices at *Westminster* ; as also fifty Shillings, which were awarded to the said *J.* in our same Court, for his Damages which he sustained by Reason of detaining the said Debt, to be levied of the Goods and Chattels which were of the said *P.* at the Time of his Death, in the Hands of the said *A.* unadministered, if she hath so many ; and if not, then the said Damages to be levied of the proper Goods and Chattels of the said *A.* and have you the Money (as in the former).

Judg-

Judgments by Default.

AND the said *A. B.* by *C. D.* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, when and where the Court will consider thereof, and says nothing to Bar or Obstruct the Action of the said *C.* whereby the said *E.* remains undefended by the said *A.* ; for which Reason the said *E.* ought to recover his Damages against the said *A.* occasioned by the Premisses. *But because it is not known what Damages the said E. hath sustained by Reason of the Premisses ; therefore the Sheriff is commanded, that he diligently enquire, by the Oath of twelve honest and lawful Men of his said County, what Damages the said E. hath sustained, as well by Reason of the Premisses, as for his Expences and Costs laid out by him about his Suit in this Cause. And that the Sheriff should cause the Inquisition that he takes thereon to be here before his Majesty's Justices at Westminster, in three Weeks from the Day of St. Michael, under his own Seal, and the Seals of those by whose Oath he should take such Inquisition ; and that he should have there at the same Time the said Writ, directed to him, as aforesaid.*

Common
Pleas.

If it be in *Assumpsit*, some have made use of this Form, instead of saying,

Whereby the said E. ought to recover his Damages, occasioned by Reason of the Premises, to say, Whereby the said E. ought to recover Damages, occasioned by the said A.'s not performing several Promises and Undertakings, made by him to the said E. and so on, as in the former.

If it be in *Trespass*, it is proper to say,

Whereby the said A. ought to recover his Damages, occasioned by the said Trespass, committed by the said A. against him the said E.

If in *Trespass, Assault and Imprisonment*, then you say,

Whereby the said E. ought to recover against the said A. his Damages, occasioned by the said Trespass, Assault and Imprisonment, committed by the said A. against him the said E.

If in *Covenant*,

Whereby the said E. ought to recover against the said A. his Damages, occasioned by the said Breach (or Breaches, as the Declaration is) of Covenants.

Common
Pleas.

A Judgment on nil dicit in Debt.

You say as in the former, to these Words.

Whereby the said *E.* remains undefended by the said *A.* Therefore it is considered, that the said *E.* ought to recover against the said *A.* his said Debt and his Damages, occasioned by detaining the same, adjudged by this Court to the said *E.* with his Assent, to fifty Shillings; and the said *A.* shall be amerc'd, and so forth.

Judgment by Cognovit Actionem.

And the said *A.* by *C. D.* his Attorney, (as in the first) And saith that he cannot deny the said Action of the said *E.* nor but that he owes to the said *E.* the said twenty Pounds.

And if it be upon Bond, you say thus,

And saith, that he cannot deny but that the said Writing Obligatory is his Deed, nor but that he owes the said *E.* the said Sum of twenty Pounds, in such Manner and Form as the said *E.* above declares against him: Therefore it is considered that the said *E.* ought to recover his said Debt against the said *A.* and his Damages occasioned by detaining the same, awarded to the said *E.* with his Consent, by this Court, to fifty Shillings. And the said *A.* shall be amerc'd, and so forth.

Non

Non sum informatus *in Case*.

And the said *A.* by *C. D.* his Attorney, comes and defends the Force, Injury and Damages, (and so on, as in the former.) And the said Attorney saith, that he is *not instructed* by his *Client* the said *A.* to give any Answer for him to the said Complaint of the said *E.* and saith nothing more thereto, whereby the said *E.* remains undefended by the said *A.* *For which Reason* the said *E.* ought to recover his *Damages* occasioned by the Premisses. *But because it is not known* what *Damages*, (so on as in the Entry of a *Nil dicit in Case*,

If it be in *Debt* it varies from the former no otherwise than as a *Nil dicit in Case* varies from a *Nil dicit in Debt*, which may be very easily observed without a useless Repetition.

A Judgment where the Defendant relinquishes his Plea of Solvit ad diem, and confesses the Action.

And hereupon the said *A.* relinquishes his said Plea, pleaded by him, as above, and saith, that he cannot *gain-say* the said *Action* of the said *E.* and owns that he hath not paid to the said *E.* the said Sum of *fifty Pounds*, upon the said *twenty-fifth Day of December*, which he ought to have done, according to the Form and Effect of the said *Condition*, as the said *E.* above declares against him. *Therefore it is considered*, that the said *E.* ought to recover against the said *A.* his said *Debt* and his
Damages,

Common Pleas. *Damages*, occasioned by detaining the same, which are awarded to the said *E.* by this Court, *with his Consent*, to *fifty Shillings*; and the said *A.* shall be amerc'd, and so forth.

A Judgment upon a Demurrer to a Scire facias upon a Recognizance.

At which Day came here as well the said *E.* as the said *A.* by their said Attornies. And thereupon the Premises being here seen, and fully understood by the *Justices* of this Court, it appears to the said *Justices* that the said *Plea* of the said *E. G. and N.* pleaded in Delay of the *Execution* as aforesaid, are insufficient in Law to debar the said *E.* from having his said *Execution* against the said *E.* for two Hundred Pounds, and against the said *G. and N.* for the said Hundred Pounds, by them severally acknowledged in Form aforesaid, as the said *E.* hath above alledged. *Therefore it is considered*, that the said *N.* ought to have his *Execution* against the said *B.* for the said two Hundred Pounds, acknowledged by him in Form aforesaid, and against the said *G. and N.* for the said Hundred Pounds, *acknowledged* by them and each of them severally and respectively in Form aforesaid, and so forth.

An Elegit.

George the Second, &c. To the Sheriff of *Berkshire*, Greeting. Whereas *C. D.* lately in our Court, before our *Justices* at *Westminster*, by the Consideration of the same Court, recovered against *A. B.* late of *Farringdon* in your County, Mercer, as well a certain Debt of two Hundred Pounds, as also one Hundred Shillings, which in our same Court were awarded

awarded to the said *C. D.* for his *Damages* which he had sustained by Reason of detaining the said *Debt*, *whereof he is convicted.* And the said *A.* afterwards came into our same Court, and according to the Form of the Statute in that Case made and provided, made his Election to have delivered to him all the Goods and Chattels of the said *A. B.* (except his Oxen and Beasts of Plow) and likewise a *Moiety* of all his Lands and Tenements in your *Bailiwick*, to hold the same Goods and Chattels as his own Goods and Chattels, and also to hold the said *Moiety* as his Freehold, to him and his Assigns, according to the Form of the said Statute, until he shall have levied the said *Debt* and *Damages* thereon. And therefore we command you, that without Delay you cause to be extended at a reasonable Price, and delivered to the said *A.* all the Goods and Chattels of the said *A.* (except his Oxen and Beasts of Plow) and likewise a *Moiety* of all his Lands and Tenements in your *Bailiwick*, of which the said *A.* was seized, *on the Morrow of the Holy Trinity*, in the sixth Year of our Reign, (at which Day Judgment was given thereon) or at any Time since, for him to keep the said Goods and Chattels as his own Goods and Chattels ; and also for him and his Assigns to keep the said *Moiety* as their Freehold, according to the Form of the said Statute, until the said *Debt* and *Damages* shall be thereof levied. And after what Manner you shall execute this our Precept, do you make appear to our Justices at *Westminster*, in three Weeks from the Day of *St. Michael*, under your Seal, and the Seals of those Persons by whose Oaths you shall make such Extent and Appraisment. And have you there this Writ. *Witness, &c.*

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An Elegit after an Elegit.

George the Second, &c. To the Sheriff of Middlesex, Greeting : Whereas C. D. lately in our Court, before our Justices at *Westminster*, by the Consideration of the same Court had recovered against A. B. late of *Hampstead* in your County, forty Pounds, which in our same Court were awarded to the said C. for his Damages which he had sustained by Reason of a certain *Trespass* committed by the said A. against the said C. with Force and Arms, and against our Peace, at *Hampstead* aforesaid in your County, *whereof he is convicted*, and the said C. afterwards came into our Court, and according to the Form of the Statute in such Case made and provided, chose to have delivered to him all the Goods and Chattels of the said A. (except his Oxen and Beasts of Plow) and likewise a *Moiety* of all his Lands and Tenements in your Bailiwick, to keep the same Goods and Chattels as his own Goods and Chattels, and also to hold the said *Moiety* as his Freehold, to him and his Assigns, according to the Form of the said Statute, until the said Damages should be levied thereupon. Wherefore we commanded you, that without Delay you should cause to be extended by a reasonable Price, and delivered to the said C. all the Goods and Chattels of the said A. (except his Oxen and Beasts of Plow) and likewise a *Moiety* of all his Lands and Tenements in your Bailiwick, of which the said A. was seized or possessed of, in three Weeks from the Day of St. Michael last past, (on which Day Judgment was given thereon) for him to keep the said Goods and Chattels as his own Goods and Chattels ; and also to hold the said *Moiety* as his Freehold, to him and his Assigns,

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According to the Form of the said Statute, until he should have levied the said Damages thereof; and in what Manner you should have executed that our Precept, you was to make appear to our Justices at *Westminster, on the Octave of St. Hillary last past*, and you having returned to our Justices at *Westminster*, a certain *Inquisition*, taken before you at the Castle of *Norwich*, on the *tenth Day of January last past*, by the Oaths of twelve honest and lawful Men of your Bailiwick; by which it is found, that the said *A.* was seized of the Manor, of, &c. (*reciting the Lands returned by the said Inquisition*) Whereupon the said *C.* came into our Court, saying that the said *A.* at the Time of giving the said Judgment, and afterwards had divers Lands and Tenements in your County, of the yearly Value of forty Pounds, besides the said Manor, &c. (*here naming the Lands*) above specified in the said *Inquisition*. And was also possessed of divers Goods and Chattels in your County, to the Value of forty Pounds, which you might have extended, appraised and delivered to the said *C.* And therefore we command you, as we before commanded you, that you cause to be extended by a reasonable Price, and to be delivered to the said *C.* all the said Goods and Chattels of the said *A.* (except his Oxen and Beasts of Plow) and likewise a *Moiety* of all his Lands and Tenements in your County, besides the said Manor, &c. (*naming the Lands belonging thereto*) above specified in the said *Inquisition*, of which the said *A.* at the Time of giving the said Judgment, or at any Time since, was seized or possessed of; and also a *Moiety* of the said Manor and Tenements, with the Appurtenances above specified in the said *Inquisition*, for him and his Assigns to hold the same as their Freehold, according to the Form of the Statute in such Case made and provided, until the said Damages shall be levied

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levied thereupon. And in what Manner you shall execute this Precept, do you make appear to our Justices at *Westminster*, on the *Octave of the Purification of the Blessed Virgin Mary*, under your Seal, and the Seals of those by whose Oaths you shall take such *Inquisition*; and have you there this Writ. *Writs, &c.*

An Elegit of a Moiety of an annual Rent against Tertenants, after a Scire facias.

George the Second, &c. To the Sheriff of Kent, Greeting. Whereas in our Court, before our Justices at *Westminster*, it was lately considered that *T. B.* ought to have an Execution against *H. C.* by his Default, as well for a Debt of one Hundred and ninety Pounds, which the said *T.* heretofore in our Court, (that is to say) in *Hillary Term*, in the fifth Year of our Reign, before Sir Robert Eyre, Knight, and his Brethren, our Justices of our Court of Common Pleas at *Westminster*, by the Consideration of the same Court, had recovered against *J. G.* late of *Greenwich* in your County, *Carpenter*; as also eight Pounds which in our same Court were awarded to the said *E. T.* for his Damages which he had sustained by Reason of detaining the said Debt, of a certain annual Rent issuing out of the Manor of *Wm.* in your County, by the Default of the said *H.* And inasmuch as you yourself returned to our Justices at *Westminster*, on the Octave of *St. Martin* last past, that the said *H.* was Tenant of an annual Rent of Thirty-two Pounds, and that the said annual Rent of Thirty-two Pounds was due to the said *J. G.* on the Octave of *St. Hillary*, in the sixth Year of our Reign, (at which Day Judgment was given against the said

H. J. for the *Debt and Damages* aforesaid. And afterwards the said *T.* came into our same Court, and according to the Form of the said Statute in such Case made and provided, chose to have deliver'd to him a *Moiety* of the said yearly Rent, issuing out of the said Manner, with the Appurtenances to hold to him and his Assigns, according to the Form of the said Statute, until the said *Debt and Damages* should be levied thereof. And therefore we command you (as in the former).

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An Elegit after a Fieri Facias, upon which a Devastavit, had been found by a Verdict against Executors.

George the Second, &c. To the Sheriff of Surrey, Greeting. Whereas by our Writ, we lately commanded our Sheriffs of London, that of the Goods and Chattles which were of, and belong'd to *H. B.* lately called *H. B. of Southwark, Esq;* at the Time of his Death in the Hands of *M. B.* late of *Croydon*, in your County, Gent. and *R. S.* late of *Kingston*, in your County, Malster, being Executors of the last Will and Testament of *H. B.* the Testator, in their Bailiwick, they should cause to be made, as well a Debt of two hundred Pounds, which *W.* had lately recovered in our Court, before our Justices at *Westminster*, against the said *M. B.* and *R. S.* as also ten Pounds, which in our same Court were awarded to the said *W. S.* for his Damages which he sustained by reason of detaining the said Debt, to be levied of the said Goods and Chattles, if they had so many unadministred in their Hands; and if they should not have so many, then the said Damages to be levied of the proper Goods and Chattles of the said *M. B.* and *R. S.* and that they should have the Money before our Justices at

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Westminster, on the Oclave of St. Martin last past, to render to the said *W.* for his said Debt and Damages, whereof the said *M. B.* and *R. S.* are convicted. And the same Sheriffs at that Day, return'd to our Justices at *Westminster*, that the said *M. B.* and *R. S.* at the Day of suing out the said Original Writ of the said *W.* (that is to say) on the second Day of *April*, in the fifth Year of our Reign, had divers Goods and Chattles which were of, and belong'd to the said *H. B.* the Testator, at the Time of his Death in their Hands unadministred, to the Value of two hundred Pounds, whereof the said *W.* might have had Satisfaction for his said Debt, as it was found by a certain Jury of the Country, by Virtue of our Writ of *Nisi prius*, taken at *Guild-Hall* of the City of *London*, before Sir *Robert Eyre*, Knight, our Chief Justice of our said Court of Common Pleas, (there being associated to him *John Higham*, Gent. according to the Form of the Statute in such Case made and provided) which said Goods and Chattles, they the said *M. B.* and *R. S.* had wasted, converted and disposed of to their own Use; whereby the said Sheriffs were not able to levy the said Debt and Damages, or any Part thereof. And our said Sheriffs of *London* further returned, that the said *M. B.* and *R. S.* had not any Goods or Chattles in their Bailiwick, whereof they were able to levy the said Debt and Damages, or any Part thereof, as they had been commanded to do; *wherefore it was considered* in our same Court, that the said *W.* should have an Execution against the said *M. B.* and *R. S.* for the said Debt and Damages, to be levied upon the proper Goods and Chattles of the said *M. B.* and *R. S.* And the said *W.* afterwards came in our same Court, and according to the Form of the Statute in such Case made and provided, came to have deliver'd to him, all the Goods and Ch

les of the said *M. B.* and *R. S.* (*except their Oxen and Beasts of Plow*) and likewise a *Moiety* of all their Lands and Tenements in your Bailiwick, (as in the former).

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An Elegit after a Scire Facias, upon a Recognizance against Bail taken in the Time of Vacation before the Lord Chief Justice.

GEORGE the Second, &c. To the Sheriff of *Suffex*, Greeting. Whereas lately in our Court, before our Justices at *Westminster*, it had been consider'd, that the said *K. W.* ought to have an Execution against *L. P.* of *Chichester*, in your County, *Mercer*, and *J. C.* of the same Place *Woollendrapers*, for two hundred and six Pounds, thirteen Shillings and four Pence, which they the said *L.* and *J.* and each of them, on the 29th Day of *November*, in the fifth Year of our Reign, before Sir *Robert Eyre*, Knt. our Chief Justice of our Court of Common Pleas, at his Chamber, situate in *Serjeants-Inn* in *Chancery-Lane*, had acknowledged to owe to the said *T.* to be levied of the Goods and Chattles, Lands and Tenements of them, and each of them, as by the Recognizance thereof delivered by the said Chief Justice, into our same Court, before the said Sir *Robert Eyre* and his Brethren, our said Justices of the Court of Common Pleas to be inrolled, and which is now enrolled of Record in the said Court, may manifestly appear. And the said *T.* afterwards came into our said Court, and according to the Form of the Statute in such Case made and provided, chose to have delivered to him, all the Goods and Chattles of the said *L.* and *J.* (*except their Oxen and Beasts of Plow*); and likewise a

Common Pleas. Moieties of all their Lands and Tenements in your County, to hold the same as his Freehold, to him and his Assigns, according to the Form of the said Statute, until the said Debt and Damages shall be levied thereof. And therefore *We command you*, that without Delay, you cause to be extended by a reasonable Price, and to be delivered to the said T. all the Goods and Chattles of the said L. and T. (except their Oxen and Beasts of Plow) and likewise a Moiety of all their, and each of their Lands and Tenements in your Bailiwick, whereof they or either of them were seised or possessed of, at the Time of their Entry into the said Recognizance or at any Time since (as in the former.)

I thought it would not be disagreeable to mention some few Observations I have made on Judgments, wherein I have endeavoured to avoid Prolixity, and they are as follows.

Coke in his first Institutes 39. tells you that *Judicium* is *quasi Juris dictum*, the very Voice of Law and Right; and the assent Words of a Judgment are very significant, which are *consideratum est*, because that Judgment is ever given by the Court upon due Consideration; and some Judgments are *Final*, others *Interlocutory*.

An *Interlocutory Judgment* is the Judgment that the Court gives, upon due Consideration had of the Matter, that the Plaintiff ought to recover; but it being uncertain what Damages he ought to recover therefore the *Final Judgment* cannot

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given till the Sheriff by a Jury, on a Writ of Inquiry has ascertained the Damages, which when they are assess'd by such Jury, that *Inquisition* is return'd; and upon such Return the Court gives *Final Judgment*, that the Party shall recover the Damages found by the Jury, and the Costs added thereto by the proper Officer of the Court by way of *Increase*, that he may suffer as little as possible in the Suit.

The Damages found by the Jury, cannot be encreased by the Court, without the Request or Assent of the Plaintiff. *Latch* 117. *Good and Lawrence, Mich. 2 Car. Roll* 119.

And where that Request or Assent does not appear in the Entry of the *Judgment*, it is Error. 2 *Cro.* 587. *Sache and Yeoman*, the same Book, 415. *Machine's Case*.

And tho' it has been said that the Court may *mitigate* as well as *increase* the Damages, I do not find any Instance of it; and the Law seems to be otherwise in *Dyer* 105. where it was held, that tho' they might increase the Damages, yet they could not *mitigate* them; but there is no Doubt but they may grant a new Trial for excessive Damages, and many Cases there are to warrant that to be Law.

In an Action upon the *Case* or *Trespass*, &c. which consists of Damages, the Jury may find less Damages than the Plaintiff lays in his *Declaration*, but they cannot find more; if they do, it is Error; for the Law presumes that a Man knows his

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own Damages better than any Body else can, and will lay the most that he has sustained; but if the Jury gives more Damages than the Plaintiff has declared for, if the Plaintiff Releases them upon the same Record, all is then set right as it should be, 10 Co. 115, 116, 117. *Pitfeld's Case*.

And you have a Case reported by *Latch* 223. of *Hooper and Pope*, where the Court increased the Damages found by the Jury, where there was a very dangerous Mayhem, upon View thereof, and the Oath of a Surgeon, that it was a Mayhem, tho' the Declaration was generally for an Assault, Battery, and wounding only; the same was done in the Case of *Mallet and Ferrers*, 1 Leon 139.

And it was said by the Court, in the Case of *Angell and Shatterton*, 1 Syd. 108. that where the Particulars of the Mayhem are not expressed in the Declaration, the Court cannot increase the Damages upon View of the Mayhem, unless the Judges of *Nisi prius*, before whom the Cause is tried, certifies the Particulars of the Mayhem to the Court, or where it is tried before one of the Judges of the same Court, where the Judgment is to be given.

But there is an Anonymous Case in *Ventris*, where it was said, that the Court would not increase the Damages where the Word *Mayhemavit* was not set forth in the Declaration. 1 Vent. 327.

As to the Conclusion of a Judgment with *Misericorda*, &c. nothing having before been

been said thereof, I think proper to mention somewhat as to that Particular.

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This Word *Misericordia* signifies, that the Court have given Judgment against the Defendant, that the Plaintiff shall recover his Debt or Damages; but the Court having done with the Suit, and finished their judicial Authority, leave him entitled to Compassion; and *Bracton* gives a fine Description of this, to shew the Reason why the Defendant ought to be thus left by the Court entitled to Compassion, that is, not to be imprison'd, but only to be amerc'd. *Bracton* 106. b.

But these Amercements were anciently at the Discretion of the Lords, the Stewards, and Judges of the Courts-Baron, and Court-Leets; and finding that People were amerced sometimes unmercifully, therefore the Legislature by the Statute of 9 H. 3. cap. 14. *Provided that no Freeman should be amerced but according to the Greatness of the Offence, and that by his Peers; and by that Statute, another's Villian should be amerced, saving his Wainage, if he falls in to our Mercy, (says the Statute).*

And it appears by *Fleta, Lib 2. cap. 66.* that when any Lord or Steward did amerce a Party without any *Compassion*, and not according to the Nature of his Offence, the Party was entitled to a Writ of *Moderata Misericordia*, whereby the Inferiour Lords or Stewards were commanded, that they should not amerce the Defendant, contrary to the Tenor of *Magna Charta*; but I submit it,

Common Pleas. whether the Conclusion of the Judgment had not better be, that the *Defendant shall remain liable to be amerced*; or if any Person should be fond of the Word *Misericordia*, then the Conclusion of the Entry may be, *and the Defendant shall remain at the Mercy of our Sovereign Lord the King.*

And this Form of the Entry of a Judgment by *Misericordia*, is in Contradistinction to a Judgment that was to be entred by *Capiatur.*

For in Actions of *Debt*, *Account*, Actions upon the *Case*, and several other Actions for Wrongs that were not directly in Breach of the King's Peace, or against any positive Statute Law, the *Judgment* was that the Plaintiff should recover his *Debt* or *Demand*, or for that he had not accounted, or whatever else was the *Judgment* of the Court, he was to make Satisfaction, and there they left him only to be amerced.

But in Actions of *Trespas*s, *Trespas*s, Assault and Imprisonment, in Actions of Deceit, and upon Penal Statutes, or for Offences against Statute Laws, the Court gave a more severe Judgment, that is, that, besides making Satisfaction to the Plaintiff, he should be taken and imprisoned till he paid the King a Fine for his Offence. And so where a Man pleaded, that a *Deed* declared upon, or that came out otherwise on the Pleadings, was not his *Deed*; there if it was found to be his *Deed*, the Judgment did not entitle him to Mercy, but the Judgment

Judgment was *quod capiatur*, that he should be taken for the King's Fine, and imprison'd till he paid it. Common Pleas.

And where a *Misericordia* was entred by the Plaintiff, instead of a *Capiatur*, tho' it was for the Benefit of the Defendant, yet it was *Error*. But by the Statute 4 & 5 of *W. & M. cap. 12*, this Fine is taken away, and the Judgments are entered in *Misericordia*, as in other Actions. But because the Statute of *William and Mary* mentions only Trespass, Ejectment, Assault and false Imprisonment, yet a *Capiatur* should have been entred upon a *non est factum* pleaded; and found for the Plaintiff after this Act of Parliament, because that is *Casus omissus* out of the Act.

But by the Statute of the Amendment of the Law, of 4 & 5 *Annæ cap. 16*, which cures all Faults in *Judgments* by *Default*, as well as if they had been by *Verdict*, except the want of an *Original* or *Warrants* of *Attorney*; a *Capiatur* entred instead of *Misericordia*, and so *vice versa*, is not *Error*, because by 16 & 17 *Car. 2. cap. 8*, those Faults are cured after a *Verdict*.

A Judgment in the Common Pleas relates to the *Essoin-Day* of the Term, and shall be a *Judgment* from that Time, but a *Judgment* in the King's Bench carries its Relation to the first Day of the Term only. *Cro. Car. 102. pl. 2.* the Case of *Stamford and Cooper*.

Therefore if a *Verdict* be of *Easter Term*, and before Judgment the Plaintiff dies, yet says

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my Lord Chief Justice *Holt*, this shall not obstruct the Entry of the Judgment; for as to the *Statute of Frauds and Perjuries*, that only requires the Time of signing the Judgment to be mark'd on the Roll, and that is only for the Benefit of Purchasers; for if *Judgment* be signed in the Vacation, yet it is entred as of the Term before, and none but a Purchaser shall be admitted to say it was sign'd at another Time; but it must be entred within two Terms after it's being signed. *Duke of Norfolk's Case*. Farresly 30.

So it was held in Doctor *Woodward's Case*, in the same Book 2. in *Pas.* the first of *Queen Anne*, that if a Man gives a *Warrant of Attorney* in the *Vacation*, to give Judgment as of *last Term*, his Death does not determine the Warrant, because the Party was alive when the *Judgment* is suppos'd to be given.

But if a *Feme Sole* gives a *Warrant of Attorney*, and afterwards marries, that is a Revocation of the *Warrant of Attorney*, and Judgment cannot be entred up thereon, as reported in *Salk.* 399. of *Pas.* the 9th of King *William* the Third, but in *M.* of King *William*, reported in the same Book, 400. the Court would not set aside such Judgment upon Motion, but left them to their Writ of Error.

By the *Statute of Frauds and Perjuries*, of 29 *Car.* 2. cap. 3. no *Judgments* shall bind Purchasers but from the Time of the signing, and the Time of signing must be mark'd on the Roll.

By

By 4 & 5 W. & M. the respective Clerks were to docquet Judgments, under the Penalty of one hundred Pounds. Common Pleas.

And a Judgment not docketted, is not to affect a Purchaser or Mortgagee, or to have any Preference against Heirs, Executors or Administrators; and this Act was made perpetual by the Act of the 7th and 8th of King William the Third, *cap. 26.*

There cannot be a Motion for a new Trial after a Motion in Arrest of Judgment, tho' there may be the Latter after the Former has been tried.

In the *King's Bench* there must be four Days exclusive between the Day in Bank, and the Signing the Judgment, the Case of Clerk and Rowland; and in that Case it is said, that where the Verdict or Inquest is the last Day of the Term, tho' there can be no Motion in Arrest of Judgment, yet there may be a Writ of Error, and this Time is allowed for these Purposes; and therefore the Plaintiff ought to give a Rule, unless Cause be shewn to the Contrary within four Days, and he is not to sign Judgment till the fifth Day. *Modern Cases in Law and Equity*, Martin and Henriques, 237. 5 *Mod. 205.*

A Judgment by Default is not to be impeached where the Party makes a Defence upon the Writ of Inquiry. *Mod. Cases in Law and Equity*, 289. *Patterson and Dyer.*

If Judgment be given upon Terms, the Court will take Notice of 'em if they are
precedents

Common *precedent*, but otherwise if they are *subse-*
 Pleas. *quent. M. 10 W. 3. Salk. 400.*

Upon Payment of *Costs* the Court will
 set aside a *Judgment* by *Default*, tho' it be
 regularly signed, if the Plaintiff has not
 lost a *Trial. Mich. 2 Ann. 1 Salk. 402.*

Pas. 4 of Queen Anne. 'Tis said the
 Court will not refer a Judgment to the
 Master for Irregularity after a Writ of Error
 brought. *1 Salk. 402.*

If a *Judgment* for a Defendant be re-
 versed in the *Exchequer-Chamber*, that
 Court shall give the new *Judgment*; but
 otherwise if on a Demurrer, because they
 cannot award a Writ of Enquiry. *1 Salk.*
403.

But if a Judgment be given in the
 King's Bench by *Original* for the Defen-
 dant, and that Judgment is reversed in the
House of Lords, they, and not the Court
 of King's Bench, must give the new *Judg-*
ment; for the Court of *King's Bench* ha-
 ving given Judgment on the Original, have
 executed their Power. *ib.*

As hath been herein before mentioned,
 where the Plaintiff or Defendant dies, af-
 ter interlocutory Judgment, by the Statute
 of 8 and 9 of K. W. a *Scire facias* may
 issue. But Care must be taken how you
 enter that *Judgment*, for in *Salk. 42.* in
 the Case of *Weston and James*, the Court
 were inclined to be of Opinion, that the
 Judgment should not be, that the Plaintiff
 should recover against the Intestate, but
 against the *Administrator.*

And

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And *Note*; where the Plaintiff, as Executor or Administrator, sues out such *Scire facias*, the Defendant cannot plead to that *Scire facias* Matter to avoid the Action, but only in Arrest of the Judgment; because the Executor or Administrator shall do no more to the *Scire facias* than the Testator or Intestate could have done to the Judgment before. *Smith and Harnon, 1 Salk.*

315.

An Action of *Debt* lies not in an *inferiour* Court, on a Judgment in *B. R.* *Cumb.*

220.

If *Trover* be brought against two, and *Judgment* be for the Plaintiff as to one Defendant, and for the other Defendant against the Plaintiff, the Plaintiff cannot have *Judgment*. *Kiffin's Case, Cumb. 310.*

One cannot move in Arrest of Judgment before the *Postea* is brought into Court; and in the King's Bench the *Postea* is in the Hands of the Plaintiff's Attorney, and therefore the Defendant must move for a Rule to bring it in; but in the *Common Pleas* the *Associate* keeps it till the *four Days* in Court are expired for moving in Arrest of *Judgment*, and he attends with it upon Notice, and a Fee of 6 s. 8 d. *Modern Cases 24. Wood and Shepherd. Mich. 10. Anne.*

If a Rule be for *Judgment* to stay till the Court be further moved, and the Court is divided, there needs no further Rule for *Judgment*; but if it be upon an *Argument*, or a *Curia advisare vult*, and the Court

Common Court be divided, there can be no *Judgment*. *Mod. Cases* 202.

But upon a Motion in Arrest of Judgment, where the Court is divided, the Plaintiff must have his Judgment.

If *Judgment* be not entered upon a Warrant of Attorney within the Year, it cannot be entered without Leave of the Court. *Mod. Cases* 212.

There is this Difference between the King's Bench and Common Pleas, in entering up *Judgments* in *Debt*: In the *Common Pleas*, they say for a Debt of so much, and so much, for *Damages occasioned by detaining the same*. And in the King's Bench they say, as well for a *Debt* and *Damages occasioned by detaining the same*, as also for *Expences and Costs*, &c. *Mod. Cases* 236.

The having a Rule for *Judgment* gives no Power to enter up the *Judgment* in another Term, as of the Term in which the Rule was granted; but such Judgment was set aside. *Hedges and Tempter B. R.* 6 *Mod.* 191. Note; there is no Rule in the *Common Pleas* but the Plaintiff's Attorney enters it without. 3 *Salk.* 212.

The Entry of a *Judgment* for the Defendant after a *Verdict*, must be, that the Plaintiff shall take nothing by his *Writ*, but for his false Claim shall be amerced, and that the Defendant shall be thereof for ever dismissed. But if it be upon a *Non-suit*, it is only, for that the Plaintiff proceeds not on his *Writ*. 4 *Mod.* 87. *Walton and Smith.*

Judg. A *Judgment* in an inferiour Court was reversed because it was *Ideo concessum est Curiam*; whereas it ought to have been *Ideo consideratum est*. 1 Cro. 319. 3 Bulst.

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3.
And a *Judgment* was reversed because it was entered *Ideo consideratum ad eandem Curiam*, whereas it ought to have been *Ideo concessum Curiam*. For it might be considered at the same Court; but it does not appear that it was the Act of the Court, and that it was considered at the same Court. Hill. 1649. See likewise 1 Saund. 1 Cro. 319.

When a *Judgment* is once executed, the goods are in the Custody of the Law, and shall not be taken away by any *Exchequer* process, or by *Commissioners of Bankrupts*. Mod. 236.

Where there is a joint *Judgment* against two, and one dies before *Execution*, the *Writ facias* must be brought against the survivor, and against the *Heir* and *Tenant* of the dead Man. Carthew 107.

A *Judgment* is an entire Thing, and cannot be reversed in Part, and affirmed in Part. Carthew 235. But otherwise if Part by the *Common Law*, and Part by the Statute. 1 Salk. 24.

But where there are several distinct *Judgments* against one *Defendant*, one of those *Judgments* may be reversed as erroneous, and yet the other *Judgment* stand in Force; so where the Damages are several tho' the Costs are entire. Hob. 5.

Where

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Where it appears by the Record that the Plaintiff has no Cause of Action, the *Judgment* shall be *arrested*. 1 *Vent.* 310.

So where it appears that the Money demanded is not yet payable. 2 *Saund.* 108. 18. So for the Incertainty of a Verdict where it appears the Jury gave Damages for what was done after the Action brought. 2 *Saund.* 171.

Where a *Writ of Error* is brought upon a Judgment in the *Common Pleas*, for quashing a Writ in a real Action, and the *Judgment* is reversed, the Court of King Bench must give such *Judgment* as the *Common Pleas* ought to have given. 2 *Saund.* 256.

So the same is upon a Writ of Error of Judgment in *Wales* or *Ireland*. 2 *Saund.* 257.

Judgment shall not be given for the Plaintiff, tho' the Plea be insufficient, if the *Reply* be insufficient, and thereby it appears that the Plaintiff has no Title. *Hob.* 14, 128.

Where the *Declaration* is good, and there is a Fault in the Defendant's Plea, tho' the Plaintiff hath joined Issue upon it which is found against him, yet the Plaintiff shall have *Judgment* upon his good *Declaration*. *Ero. Car.* 25.

Tho' a Plea concludes with *petit judgmentum*, omitting *dampna*, yet the Court shall give Judgment for Damages as incident, but it is ill on a *Demurrer*. 2 *Le.* 222, 345.

Judgment

Judgment ought to be given *de bonis* Common
Testatoris in Covenant, tho' the Breach Pleas.
 be assigned to be committed by Executors.

Saund. 112.

If the Defendant moves in *Arrest* of
Judgment, whereupon *Judgment* is stayed
 several Terms, and then the Plaintiff dies,
 the Court may give *Judgment*, *nunc pro*
tunc, as of the first Term when it was
 moved. 1 *Syd.* 462.

If a final *Judgment* be entered without
 an Interlocutory *Judgment*, it is Error.
Mod. Cases 7.

There is this Difference between a *Judg-*
ment in *Trespas*s and a *Judgment* in *Debt*,
 against several Persons, if one *Judgment*
 be for one Defendant in *Debt*, *quod querens*
nil capiat per breve, or *per Billam*, that
 will avail the other Defendant, and the
 Plaintiff cannot have *Judgment* against
 him; but in *Trespas*s if one Defendant
 be acquitted, yet the Plaintiff shall recover
 against the others. 1 *Saund.* 217.

An *erroneus* *Judgment* may be pleaded
 by an Executor; for an *erroneous* *Judg-*
ment till it is reversed is a good *Judgment*.
Vaughan 94.

A *Retraxit*, entered before *Judgment*
 for one of the Defendants, operates by
 way of *Release* as to the rest; but if it be
 entered after *Judgment*, it shall extend
 only to him for whom it is entered. 1 *Rolls*
Rep. 233.

In *Trespas*s against two, one pleads *spe-*
cially, the other *not guilty*; and a *De-*
murrer

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murrer is joined upon the *special Plea*, and *Judgment* be for the Plaintiff, and a *Writ of Inquiry* of Damages awarded; the Plaintiff may take his *Judgment* for the Damages, and *relinquish* his Action as to the Issue; but let him take Care that the Entry of the *Judgment* be before the Entry of *relinquishing* his Action. 2 Roll's Abr. 104.

If a *Judgment* be obtained, but the Plaintiff does not take out *Execution* within a Year and a Day, he must revive it by *Scire facias* made out of Course; but if the Judgment be of seven Years standing, you must move for such *Scire facias*; yet if the Plaintiff gets *Executions* made out and returned, and enters them upon a Roll, there needs no *Scire facias*.

By the Course of the Court of *Common Pleas* now used, if the Plaintiff's Attorney gives a Rule to plead on *Monday*, he cannot sign Judgment 'till *Friday* in the *Afternoon*.

But if the Rule be given on *Friday*, he may sign *Judgment* on *Tuesday* in the *Afternoon*, having duly called for a Plea in Writing, so that *Sunday* is one of the Days.

But if a Rule be given to plead, and the Plaintiff's Attorney neglects to call for a Plea till after the Rules are out, the Defendant has till the *Afternoon* of the next Day to plead, (that is) the Defendant's Attorney cannot sign *Judgment* till the next Day in the *Afternoon*.

Some

Some few Observations on Executions.

THE usual Writs of Execution are either by *Fieri facias* on the Goods and Chattels; and this Writ originally lay at Common Law, and was not given by the Statute of *W. 2.* as falsely alledged in *Jacob's Law-Dictionary*, describing a *Fieri facias*, or by *Elegit*, whereby the Moiety of the Defendant's Lands are to be extended; or by a *Capias ad satisfaciendum*.

The *Elegit* indeed was given us by the Statute of *Westminster 2. cap. 18.* And the *Capias* by the Statute of *Marlebridge, cap. 23.*

There may not be two Writs of Execution at one and the same Time subsisting; but if the Sheriff returns upon a *Fieri facias*, that the Defendant hath no Goods, or but so many whereby he could not levy the whole Debt or Damages, the Plaintiff may have another *Fieri facias* for the Residue, or he may have an *Elegit*, or he may have a *Capias* against his Body; but if he once takes the Body, (which in Law is deemed the greatest Satisfaction, except the Money recovered) he can neither have a *Fieri facias* or *Elegit*.

But if a *Capias ad satisfaciendum* be taken out, and the Plaintiff has no Effect of it; as if the Sheriff return a *Non est inventus*, tho' it is said in *Roll's Abr. 904.* that the Plaintiff may not have another Execution.

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The Law is otherwise, as in *Hob.* 57. in the Case of *Foster* and *Jackson*.

And *Hobart* held the Law clearly to be that where the Party sues out an *Elegit*, and can have no Effect of it, he may resort to another Execution. *Hob.* 57.

If a Man died in Execution his Executors were no further chargeable. *Hob.* 56, 7, 8, 9. before the Statute of 21 *Ja.* 1. *cap.* 24.

If upon an *Elegit* there are no Lands, but only Goods, which are not enough, the Plaintiff may have a *Capias* for the Residue; for it is in it's Effect but a *Fieri facias* tho' the Word is *Elegit*. *Hob.* 58.

Note, this
Case is best
reported in
6 Mod.
290.
1 Mod.
188.

A *Fieri facias* abates not by the Plaintiff's Death, but the Sheriff must go on to execute his Writ, Clerk and *Withers*. *Mich.* 3. *Annæ Salk.* 322. *Hill* 10. *George*, Mod. Cases in Law and Equity, 225.

A Writ of Error is a Superfedeas from the Time of the Allowance; but if the Writ of Execution be once executed, it may be returned. *Salk.* 322. *Perkins* and *Wol-luster*.

If on a *Fieri facias* all the Money is not levied, the Writ must be returned before a second Execution can be made out, because the second is grounded upon the Deficiency that appears in the first. *Oviatt* and *Vyner*, *Salk.* 318.

An Execution was taken out against a Person in his Life-time, and executed on his Goods after his Death, and held to be good

good without a *Scire facias*. *Mod. Cases* Common
in *Law and Equity*. 225. Pleas.

It is a good Return to a *Fieri facias*, for the Sheriff to say he has levied the Goods, and that they remain in his Hands for want of Buyers; and if he continues in his Office, you issue out a *Venditioni exponas*, and if he does not do it, then a *Distringas* directed to the Coroners to distrain the Sheriff to sell; for by that Writ he is compellable to sell; if he is out of his Office, you issue out a *Distringas* to the new Sheriff to distrain the old Sheriff to sell; whereby he is compellable under the Penalty of forfeiting Issues to the Value of the Goods. 6 *Mod.* 295, 296.

The Sheriff to execute a Writ of *Fieri facias*, is not to break open the outer Door of the House; but if he does, the Execution, 'tis said, will be good, only the Sheriff will be liable to an Action of *Trespass*. 5 *Co.* 93. So 'tis said the Sheriff may not break open the House, nor pull the Latch, and open the Door, if it be shut, to execute a Writ of *Capias ad satisfaciendum*; but if he does, and arrests the Party, the Arrest will be good; but the Sheriff may be punished for the Abuse of his Authority. *Hob.* 1. 5 *Co.* 91. *Dy.* 65, 214. But he may break open the inner Doors to execute his Execution. *Cumb.* 327. *Palmer* 53, 4.

It was said by *Pollexfen*, Chief Justice, in the Case of *Bealy and Sampson*, 2 *Ven.* 95. that

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that the Sheriff cannot deliver the Defendant's Goods to the Plaintiff in Satisfaction but they must be Sold, and there needs no Appraisalment, as there must be upon an *Elegit*.

It was held in 2 *Saunders* 47. the Case of *Wilbrabram* and *Snow*, that the Sheriff hath such a Property in the Goods taken in Execution, that he may maintain an Action of Trespass or Trover for them.

Where the Sheriff upon a *Fieri facias* returns, that he had seized the Goods of such a Value, which was less than the Debt, and that they were rescued, and that the Defendant had no other Goods, the Plaintiff cannot sue out an Execution for any more than for the Residue. 2 *Saund.* 344.

And where the Sheriff suffers Goods taken in Execution, return'd to be of such a Value, to be rescued out of his Hands, a *Scire facias* lies for the Plaintiff to have Execution against him, according to that Value. 2 *Saund.* 344, 5.

A *Venditioni Exponas* cannot be awarded if it appears that the Goods are out of the Hands of the Sheriff. 2 *Saund.* 344.

Where you sue out a new *Fieri facias*, or a *Testatum*, you cannot do it till the former is filed and returned, but you need not stay till the Appearance Day of the Return for the Teste of the new *Fieri facias*, but it may be tested on the Return-Day of the first Writ. *Jones* 200.

If he who is Plaintiff in an Execution of Common Pleas. Lands, releases one Acre of the Execution, all is extinct, because the Execution is en- fire. 1 *And.* 266.

On a *Fieri Facias* against one Partner, the Sheriff may take the Goods of both, and the Vendee shall have a Moiety in common with the other. *Cumberb.* 217. *Pope* and *Homan*.

Upon a *Fieri Facias* against an Administrator, the Sheriff may sell an Estate for the Life of another. *Cumberb.* 191. *John-* *son* and *Street*.

A *Fieri Facias* can't be continued upon the Roll longer than a Year, without a new Writ. *Cumberb.* 346.

On a *Fieri Facias* where the Party has two Gowns, the Sheriff may take one of them. *Cumberb.* 356.

An Execution once begun shall proceed if there be no Irregularity, and where the Party brings an *Audita Querela* on a Deed which is confess'd; tho' a *Supersedeas* be awarded, yet that shall not prevent the Sale of the Goods by the Sheriff. *Cumb.* 388, 389.

If the Sheriff has two *Elegits* against the same Person at one and the same Time, he may deliver a Moiety of his Land to one of them, and then to the other he is to deliver a Moiety of that which is left. 1 *Cro.* 482.

And upon an *Elegit*, the Sheriff ought to deliver Possession, by Meets and Bounds, or otherwise the Writ may be quashed. 1 *Vent.* 259.
If

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If two Executions are deliver'd to the Sheriff on the same Day, he is bound to give Preference to that which was first deliver'd; but if in Fact he executes that first which was last deliver'd, and makes a Sale of the Goods, the Vendee hath a good Title; and the Party that sued out the first Execution, is entitled to an Action against the Sheriff. *Cartbew* 420. *Smallcombe* against *Buckingham* and others. *Salk.* 320.

Where a Judgment is had against two, and one dies before Execution, the *Scire Facias* ought to be brought, as well against the Survivor, as against the Heir and Tertenants of the Deceased; and my Lord Chief Justice *Holt*, as 'tis reported, said, as this was a judicial Writ, it might be framed upon the subject Matter, and proposed the Form to be thus:

That the Writ should be against the Survivor, to shew Cause why the Plaintiff should not have Execution against him *de bonis & Catallis*, and of the Moiety of his Lands, and against the Heir, and Tertenants of the Deceased, to shew Cause, why the Plaintiff should not have Execution of the Moiety of the Lands of the Deceased, without mentioning the Goods. *Cartbew* 107. *Pantano* and the Tertenants of *Hall*.

A Prisoner is to be charg'd in Execution within two Terms after Judgment obtain'd. *Modern Cases in Law and Equity* 227, 236.

A Writ of Error by two, and one dies depending the Writ, an Execution may be sued out without a *Scire Facias*. *Modern Cases in Law and Equity*, 108. 225. *Penrice and Brace*.

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It is said in the Case of *Shaw and Cutters*, 1 Cro. 851. that where two are convicted, the Taking of one, and his Death, is no Discharge of the other.

Upon fresh Pursuit of a Prisoner escaped, the Sheriff may break open the House, and if he arrests the Defendant looking out of the Window, he may break open the Door to take him. *Palmer* 53.

Where the Sheriff permits the Defendant to escape that is in Execution, by the Consent of the Plaintiff, he shall never take him again. 1 *Show*. 174.

By the Act of 21 *Ja. c.* 24. notwithstanding the Party's dying in Execution, the Plaintiff may have an Execution against his Lands, Goods and Chattles.

By an Act of the 8th and 9th of King *William* the Third, *cap.* 27. if a Prisoner in Execution escapes, any Creditor, at whose Suit he stands charged, may retake him by a new Execution.

Before the Act of the 29th of *Charles* the Second, the Goods were bound at the *Teste* of the Writ, but by that Statute they are bound only from the Time of the Delivery to the Sheriff; but Lands are bound from the Day of the Judgment.

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*A Scire Facias upon a Judgment against
an Executor after a Tear and a Day.*

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth, To the Sheriff of Norfolk, Greeting. Whereas *John Adseed*, lately, (that is to say) in the Term of *St. Michael*, in the fifth Year of our Reign, in our Court, before Sir *Robert Eyre*, Knt. and his Brethren, our Justices of the Common Bench at *Westminster*, had recovered against *Philip Barnsley*, late of *Diss* in your County, *Hofier*, as well a certain Debt of Eighty Pounds, as also fifty Shillings, which in our same Court were awarded to the said *John* for his Damages which he had sustained, by reason of detaining the said Debt, as by the Record and Proceedings thereof now remaining in our same Court, before our Justices at *Westminster*, may manifestly appear; nevertheless Execution of the said Judgment yet remains to be made, as we have received Information from the said *John*. And because we are willing that those things which are Just and Right should have a due Execution; therefore we command you, that by honest and lawful Men of your Bailiwick, you cause the said *Philip* to know, that he must be before our Justices at *Westminster*, on the Octave of *St. Hillary*, to shew if he has, or knows of any Cause, why the said *John* ought not to have an Execution against him for the said Debt and Damages, according to the Form and Effect of the said Recovery, if it shall seem Expedient for him so to do. And have you there the Names of those Persons by whom you shall so cause it to be known to him; and this Writ. Witness Sir *Robert Eyre*, Knt.

at *Westminster*, the 28th Day of *November*, Common
the sixth Year of our Reign. Pleas.

There is no Difference if it be in Case,
in stead of, as well a certain Debt of
nty Pounds, &c. you say eighty Pounds,
ch in our same Court, were awar-
to the said *John*, for his Damages
ch he had sustained, by reason of seve-
Promises made, and not perform'd by
said *Philip* to the said *John*, as by the
ord, &c. as in the former, only afterwards
ere it is above-mentioned the said Debt
Damages; the Word Debt must be
tted, and only say, why the said *John*
ht not to have an Execution for his said
nages, &c.

*Scire Facias against an Executor, upon
a Judgment against the Testator.*

— *GEORGE* the Second, &c. Where-
Robert Gibs, Esq; lately in our Court of Com-
Pleas, in the Term of *St. Hillary* in the
Year of our Reign, before *Sir Rob. Eyre*, Knt.
his Brethren, our Justices of our Common
at *Westminster*, by Consideration of the same
t, had recovered against *Edward Batwell* late
ndon, Esq; heretofore called *Edward Batwell*, of
n, Esq; as well a certain Debt of 80*l.* as
which in our same Court were awarded to
said *Robert*, for his Damages which he had
ned, by reason of detaining of the said Debt,
eof the said *Edward* was convicted, as by the

H 2

Record

Common Record and Proceedings thereof now remain
 Pleas. here in our Court at *Westminster* afore said, manifestly appear: Nevertheless Execution of said Judgment remains yet to be made; and said *Edward* is dead as we have received Information from the said *Robert*; and because we are willing that those Things that are Right and Just should be done, and should have a due Execution to be given thereon; therefore we Command that by honest and lawful Men of your Bailiwick you cause *John Barwell*, Esq; Executor of the said *Edward*, that he be here in three Weeks from Day of *St. Michael*, to shew if he hath, or know of any Cause, why the said *Robert* ought not to have Execution against him the said *John*, for the said Debt and Damages, of the Goods and Chats which were of the said *Edward*, at the Time of his Death, in his Hands to be administered, if it seem Expedient to him so to do. And have you to the Names, &c. (as in the former).

A Scire Facias upon a Judgment in ejectment for the Plaintiff against Defendant, who entred into the Land after the Death of the Defendant Ejectment.

GEORGE the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas *Edward* lately, (that is to say) in *Easter* Term, in the Year of our Reign, before Sir *Robert Eyre*, and his Brethren, our Justices, of our same Court at *Westminster*, by the Consideration of the Court recovered his Term of and in three *messuages*, with the Appurtenances, in the Parish of *St. Giles* in the Fields, in the County afore

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inst *Humphrey Weld*, late of *London*, Esq; which
William Atwood, on the first Day of *January*, in
 third Year of our Reign, had demised to the said
Edward, for him and his Assigns, to have and oc-
 cupy the same, from the 25th Day of *December*,
 last past, unto the full End and Term of five
 years, from thence next following, and fully to be
 compleat and ended, which is not yet past. And
 that the said *H.* drove out and removed the said
Edward from his Possession, and ejected him out of
 said Farm, and also eleven Pounds, which
 our same Court were awarded to the said
Edward, for his Damages which he had sustained
 reason of the Premises, whereof the said *Hum-*
frey is convicted, as by the Record and Proceed-
 ings thereof now remaining in our said Court may
 manifestly appear; Execution nevertheless of the
 Judgment yet remains to be made: And the
 said *Humphrey* is dead, and one *Nicholas Earl of*
Carlinsford, and *Mary* his Wife, have entred into
 the said Messuages, with the Appurtenances, and
 did the same, contrary to the Form of the said
 Recovery, as we have received Information from
 the said *Edward*. And because we are willing,
 that those Things that are rightly done in our
 Court, should have a due Execution; there-
 fore we Command you, that by honest and lawful
 men of your Bailiwick, you cause it to be known
 to the said *Earl of Carlinsford*, and *Mary* his Wife,
 that they must be here in fifteen Days from the Day
 of *St. Martin*, to shew Cause; if they have or
 know of any thing to say for themselves,
 why the said *Edward* should not have his Execu-
 tion of the said Term unexpired, according to the
 Form of the said Recovery, if it shall seem to them
 expedient so to do. Witness, &c. as in the former.

H 3.

Adjudged

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Adjudged by the Court, that this *Scire Fac* would lie according to the Case of *Jackson* and others in *Hill. 11 W. 3.*

Scire Facias against the late Sheriff Dorset, for not returning the Money levied by a Fieri Facias.

GEORGE the Second, &c. to the Sheriff of *Dorsetshire*, Greeting. Whereas we lately Commanded our late Sheriff of *Dorset*, that he should cause to be made of the Goods and Chattles of *J. B.* late of &c. otherwise called, &c. in his Bailiwick as well a certain Debt of twenty Pounds, which *J. B.* here in our Court, before our Justices of Common Pleas recovered against him; as twenty Shillings which here in our same Court were awarded to the said *J.* for his Damages which he had sustained, by reason of detaining the said Debt whereof the said *J. J.* is convicted; and that he should have the Money there on the Morrow of *St. Michael's*, now last past, to render to the said *J.* for the Debt and Damages aforesaid, at which time the said Sheriff return'd, that by Virtue of the said Writ, he had caused to be made of the Goods and Chattles of the said *J. J.* in his Bailiwick the said Debt and Damages; and that he had there the Money to render for the said Debt and Damages: Nevertheless the said Sheriff had not there the Money to render to the said *J. B.* for the said Debt and Damages, according to the Form of the said Writ, as we have received Information from the said *James*. And because we are willing, that those Things which are rightly done in our Court, should be brought into Execution, we command you, that by honest and lawful Men of your Bailiwick, you cause the said *Richard*, our late Sheriff of the said County of *Dorset*

to know, that he must be here in *fifteen Days from the Day of the Feast of Easter*, to shew if he knows of, or hath any Thing to say for himself, why the said *James* should not have an Execution against him for the said Debt and Damages recovered by him the said *R.* in Form aforesaid, to be levied of the proper Goods and Chattels of the said *Richard*, (and then as in the former.)

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A Scire facias upon a Recognizance against Bail in the Common Pleas.

GEORGE the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas *Sabrian Cole* of *Bishopsgate-street, London*, Merchant, lately, (that is to say) in the Term of the *Holy Trinity*, in the fifth Year of our Reign, in our Court of Common Pleas, before *Sir Robert Eyre*, Knight, and his Brethren, our Justices of our said Court of Common Pleas at *Westminster*, acknowledged himself to be indebted to *Thomas Sparks*, in the Sum of one Hundred and twenty Pounds of lawful Money of *Great Britain*, which said Sum of one Hundred and twenty Pounds, the said *S. C.* for him and his Heirs, willed and granted to be made of his Goods and Chattels, to be levied to the Use and Behoof of the said *Thomas*, under this Condition, That if it should happen Judgment should be given for the said *T.* against the said *R.* in the same Court here, in a certain Plea of *Trespass upon the Case*, to the Damage of the said *Thomas* sixty Pounds, prosecuted by the said *T.* in the same Court here against the said *R.* then he the said *R.* should satisfy to the said *Thomas* all his Damages which should be awarded to him here in this Court, in the said Plea of *Trespass upon the Case*, or should render his Body in Execution of such Judgment,

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to our *Prison of the Fleet* : And altho' the said *Thomas* in the Term of *St. Michael*, in the said fifth Year of our Reign, in our same Court of Common Pleas, before the said *Sir Robert Eyre*, Knight, and his Brethren, our Justices of the said Common Pleas at *Westminster* aforesaid, by the Consideration of the same Court, recovered against the said *R.* Forty-six Pounds ten Shillings, which were awarded to the said *Thomas* now in our same Court, for his Damages which he had sustained by Reason of the said *Trespass upon the Case*, whereof he is convicted, as by the Record and Proceedings thereof now remaining in our same Court, may manifestly appear. Nevertheless the said *Richard* hath not made Satisfaction to the said *Thomas* for his said Damages, nor rendered his Body to our Prison of the Fleet, in Execution of such Judgment, according to the Form of the said Recognizance, as we have received Information from the said *Thomas*. And because we are willing that those Things that are rightly done should be brought to a due Execution, Therefore we command you (as in the former).

*A Scire facias by Executors against
Executors.*

GEORGE the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas *W. M.* Citizen and Mercer, &c. and *A. C.* Widow, Executors of the Testament of *R. S.* late Citizen, &c. lately called, *R. S.* &c. and *A. S.* his Wife, lately in our Court of Common Pleas, (that is to say) in *Michaelmas* Term, in the fifth Year of our Reign, before *Sir Robert Eyre*, Knight, and his Brethren, our Justices of the said Court of Common Pleas, by the Consideration of the same Court, had recovered against

against *J. M.* late of *S. &c.* Executor of the last Common Will and Testament of *J. M.* Gent. as well a certain Debt of forty Pounds, to be levied of the Goods and Chattels of the said *W.* as also forty Shillings which in our same Court were awarded to the said *W.* and *A.* for their Damages which they had sustained by Reason of detaining the said Debt, to be levied of the Goods and Chattels of the said *W.* if he should have so many; and if not, then to be levied of the proper Goods and Chattels of the said *Jo.* Whereof he is convicted, &c. as by the Record and Proceedings thereof, here remaining in our said Court of Common Pleas, manifestly may appear: Execution nevertheless of the Judgment yet remains undone; and the said *A.* after the said Judgment was so given, took to Husband one *R. H.* as we have received Information from the said *R.* and *Anne.* And because, (as in the former).

Of Proceedings by and against Attornies.

Note; by the Statute in the third Year of his present Majesty, *cap. 6.* no Attorney can sue his Client for Business done for him till one Month after the Delivery of his Bill. And I submit it whether it is safe, That the Teste of the *Attachment* be before the Bill delivered, for that is the Day by Construction of Law, the Writ was sued out. And as that is *quasi* an Original, the Defendant will be intitled to Oyer of it; and if it appears that the Teste of that Attachment be before the Bill delivered, it was consequently before he had a Right to bring his Action.

The Form of the Attachment is thus.

GEORGE the Second, &c. to the Sheriff of Norfolk, Greeting. Attach A. B. and C. D. (or as many as are in the Writ) so that you have them before our Justices at Westminster, on Monday next after the Octave of St. Hillary, to answer to John Cock, Gentleman, one of the Attornies of our Court of Common Bench, according to the Liberties and Privileges of our Court, for such like Attornies of the same Bench, used and approved of in the same for so long a Time as the Memory of Man is not to the contrary, of a Plea of *Trespass upon the Case*. And have you there this Writ. *Witness, &c.*

Note; all Proceedings for and against Attornies must be returnable at a *Day certain*, (that is to say) on the Appearance Day of every Return, *naming the Day*.

The Form of a Declaration for an Attorney is thus.

London. John Doe, late of London, Cutler, was attached by his Majesty's Writ of Privilege, issuing out of this Court, to answer to Matthew Isaack, Gentleman, one of the Attornies of his said Majesty's Court of Common Bench, according to the Liberties and Privileges of the said Bench, Time out of Mind used and approved of, of a Plea of *Trespass upon the Case*: And whereupon the said M. complains

plaints, That whereas, *So go on with the Declaration Common*
to the End, inserting underneath, in this Manner. Pleas.

The Pledges for the } *John Doe,*
 Prosecution are } *Richard Roe.*

A Certiorari for an Attorney of this Court,

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of London, Greeting. We command you that you have before our Justices at *Westminster, on Monday next after the Oſave of St. Hillary*, all, and all manner of Causes, Complaints and Demands, levied, sued out and depending before you or either of you, against *Matthew Isaack*, one of the Attornies of our Court of Common Bench, together with the Days of levying the same; so that our said Justices may upon viewing those Causes be able, to do full and complete Justice to the said *Matthew Isaack*, according to the Liberties and Privileges for such Attornies, Time out of Mind used and approved of in our Court of Common Bench; and have you there this Writ. *Witness, &c.*

The Form of a Superfedeas for an Attorney.

GEORGE the Second, &c. to our Justices assigned to hold Pleas before us. It having been made manifest unto us, on the Behalf of *Matthew Isaack*, one of the Attornies of our Court of Common Bench, That whereas he is an Attorney of our said Bench, and is prosecuting and defending divers Affairs and Suits of many of our Liege People, as their Attorney of the same Bench; and the

Common
Pleas.

the said *Matthew*, and all other Attornies of the said Bench, while they are so prosecuting and defending any Affairs in the said Bench, should, and ought to be under our Protection, according to the Liberties and Privileges of our said Court of Common Bench, Time out of Mind there used and approved of: Nevertheless, *William Strickland*, Pedlar, not being ignorant of the Liberties and Privileges of our said Court of Common Bench, sued out and prosecuted in our Court before us, a certain Bill for a Trespass committed by the said *Matthew* against the said *William Strickland*, as he asserted at *Rippon* in our County of *York*, in Contempt of our said Court of Common Bench; and to the great Damage of the said *Matthew*, and several of our Liege People whose Attorney he is, as we are informed. And therefore we command you, that you totally cease from proceeding upon whatsoever Plaints and Pleas are depending in our Court before you, against the said *Matthew*, (Pleas of Freehold, Felonies and Appeals only excepted) informing the Parties in the said Complaints and Pleas on our Behalf, that they may prosecute their Plaints and Pleas in our Court, before our Justices of the Common Bench, if they think fit. *Witness*, &c.

A Writ of Privilege for an Attorney of the Common Pleas, being sued in the Mayor's Court of the City of London.

Officina
Brevium
164.

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of *London*, and every of them, *Greeting*. Whereas according to the Custom of our Court of Common Bench, hitherto used and approved of, the Attornies of our said Court of Common Bench, ought not, nor have they for

Times.

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Pleas.

Times past been used to be compelled to answer before any of our Justices or Officers, or any other secular Judges whatsoever, except before our *Justices of the said Common Bench*, upon any Pleas, Plaints or Demands which do not particularly relate to us, (Pleas of Freeholds, Felonies and Appeals excepted) And we have lately received Information, by the great Complaint of *Matthew Isaack*, one of the *Attornies* of our said Court of *Common Bench*, that several ill-disposed Persons intending to disquiet the said *Matthew Isaack*, have impleaded him by divers Plaints levied in our Court before you, which do not relate to us; whereby he is unable to attend his said Office as an Attorney, upon several Affairs and Suits depending in our said Court of *Common Bench*; which if it is permitted, will manifestly take away, and be to the Derogation and Diminution of the Jurisdiction of our said Court of *Common Bench*, and the Liberties and Privileges thereof. And because we are willing that the Jurisdiction, Privileges and Customs, for so long Time used and approved of in our said Court of *Common Bench*, should be inviolably observed; *We command you*, and every of you, that you, and every of you desist from proceeding in all and singular the Plaints and Pleas whatsoever, depending in our Court, before you or either of you, against the said *Matthew Isaack*, by whatsoever Name he shall be therein reputed, (Pleas of Freeholds, Felonies and Appeals only excepted) altogether informing the said Parties, Plaintiffs in the said Complaints, that they may prosecute their said Complaints before our Justices of the said Court of *Common Bench*, if they think it expedient for them so to do. *Witness*, &c.

D. F.

Common
Pleas.

Of Proceedings against Attornies.

THE Method of proceeding against an Attorney, is to draw the Declaration, and ingross it on a double Penny Stamp on Parchment, beginning and ending it in this Manner.

To the Justices of our Sovereign Lord the King of the Common Bench.

Richard Williams, by John Cock his Attorney, complains of Matthew Isaack, one of the Attornies of the Court of Common Bench of our Sovereign Lord the King, present here in Court in his proper Person. For that whereas, so go on with the Declaration, to the Words, and whereupon the said Richard Williams declares he is injured and endamaged to the Value of forty Pounds. Adding the Words, And therefore he prays Relief, and so forth; instead of the Words, And therefore he brings this Suit, and so forth.

And the Reason of this Distinction is, because where there is a Declaration, there hath been a Suit before commenced by Process, to which the Party hath appeared; but in this Case of a Bill filed against an Attorney, there is no Suit, but the Bill is
only

only filed with an Intent to compel an Appearance, and what he prays therefore by his Bill, is only to be relieved in that Instance, and is not properly a Suit till there is an Appearance by the Attorney to the Bill.

Common Pleas.

The Method of proceeding therefore is, The Plaintiff's Attorney delivers this Bill to one of the Criers of the Court, who calls such Attorney by his Name, and solemnly proclaims aloud, that if such Attorney does not appear to such Bill, he will be forejudged. The Meaning of which forejudging is, that he will be struck out of the Roll of Attornies ; and when the Crier hath so called such an Attorney, the Bill is delivered to the Secondary, who gives a Rule thereupon, signifying, that if such an Attorney does not appear, he will stand forejudged ; and then this Bill is to be carried to the Prothonotary's Office, and there filed and entered in a Book kept for that Purpose. And if the Attorney does not appear in four Days from the Rule given, then the Bill is entered upon a Roll of that Term, and carried to the Clerk of the Warrants and Inrollments ; and he thereupon strikes such Attorney out of the Roll.

Note; there must be Pledges added in this Manner.

The Pledges for the } *John Doe,*
Prosecution are } *Richard Roe.*

The

Common.
Pleas.

*The Form of the Entry of which Fore-
judger is as follows.*

*You first enter the Bill with a Memorandum
in this Form.*

*Be it remember'd, that on the 23d Day of Octo-
ber, this same Term, Richard Williams came here
into this Court by John Cock his Attorney, and ex-
hibited to the Justices of our Sovereign Lord the
King, his Bill against Matthew Isaack, Gent. one
of the Attornies of the Common Bench, of our So-
vereign Lord the King present here in his pro-
per Person, the Tenor of which Bill follows in
these Words, (that is to say) to the Justices of our
Sovereign Lord the King, Richard Williams, by
John Cock his Attorney, complains of Matthew Isaack,
one of the Attornies of the Common Bench of our
said Sovereign Lord the King, present here in Court
in his proper Person; for that whereas, &c. and so
go on with the Bill, ending with the Words, and
thereon he prays Relief, and so forth. The Pledges
for the Prosecution are John Doe, and Richard Roe,
whereupon the said Matthew being solemnly called
came not, therefore he stands forejudged from ex-
ercising his Office of Attorney of this Court, for
his Contumacy, and so forth.*

*There is another Entry in Mich. 13 H. 7.
Roll 307. in this Form.*

*Middlesex — Be it remember'd, that the
eighth Day of November this same Term, one
Rowland Brigg, one of the Attornies of the Common
Bench, was solemnly called here by the Court, to
appear:*

appear and answer to certain Matters, Offences, and Impositions done by him, as it is said, and here in this Court charged upon, and objected against him. Therefore the said Rowland is for his Contumacy, forejudged from exercising his Office of Attorney of this Court, until, *and so forth.*

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By which *and so forth*, is understood, until he shall come into this Court in his proper Person, and clear himself from the above-mentioned Offences and Impositions above charged upon him, and from his Contumacy in not appearing when he was solemnly called, as above-mentioned.

There is an Entry in *Rastall* 96. a. for the restoring an Attorney forejudged, upon his Payment of six Shillings and eight Pence, and his Offence was, for his appearing for the Defendant without a Warrant of Attorney; and the Form of that Entry is in this Manner, *viz.*

After the Words which constitute the Forejudger the Entry begins.

Afterwards, (that is to say) on the 30th Day of *October*, in the 15th Year of the Reign of our Sovereign Lord the King, came the said *W. C.* in his proper Person, and having made Payment of his Fine of six Shillings and eight Pence, to our Sovereign Lord the King, by reason of the Premisses, the same being this Instant paid into this Court into the Hands of *K. K.* to buy a Chest, therein to put and keep the Rolls and Records of our Sovereign Lord the King; and that the said *W. C.* prays that

Common Pleas. that he may be thereof freed and discharged; and hereupon the said *W. C.* at his special Instance and Request made to the Justices here, is again permitted and restored to exercise his said Office of an Attorney of the *Common Bench*, and readmitted to that Office.

Mich. 15 H. 7. Raftall 96. b.

And by this Forejudger is meant, that he stands unprivileged by the Court, and may be arrested as any other Person.

It is very proper here to observe the Method of an Attorney's being restored, which is, when the Attorney hath made Satisfaction to the Plaintiff, or if he appears, and will controvert the Suit, he must summon the Attorney for the Plaintiff before a Judge, to shew Cause why he should not be restored, and on their attending the Judge, if it appears to him, that the Plaintiff hath had Satisfaction, or the Matter in Dispute is such, as the Attorney may be admitted to controvert it, he will make an Order to the Clerk of the Warrants and Inrollments, to replace him in the proper Roll of Attornies, who does it without any Entry whatsoever. But if such Attorney be arrested by any other Person, and he pleads his Privilege, and the Plaintiff replies that he is forejudged, and issue be taken thereon, it is then proper, that this Entry be made; for his being forejudged is as much a Bar, and deprives him of his Privilege, with Regard to others, as an Outlawry is a Bar for any other Person to take Advantage of, as well those that
are

are Strangers, as those that are Parties to Common
the Outlawry. Pleas.

*The Form of an Attachment against an
Attorney.*

GEORGE the Second, &c. to the Sheriff of London, Greeting. Attach Matthew Isaack, one of the Attornies of our Court of Common Bench, so that you have him before our Justices at Westminster, on Monday next after the Octave of St. Martin, to make answer to us, of and concerning those Things, which shall then on our Behalf be objected to him; and have you there this Writ. Witness Sir Robert Eyre, Knt. the 28th Day of November, in the 6th Year of our Reign.

And the Reason why an Attachment is not to appear and make Answer to the Plaintiff in the Cause, upon whose Application such Attachment was granted, but to answer to us, which is to our Sovereign Lord the King, is, because it is for a Contempt of the Court of Justice; and the King being supposed by Law, to be the Fountain, from which all Justice flows, therefore he must answer the Contempt to him; and the Fine which is imposed for such Contempt is the King's, and to be estreated into his Exchequer.

And no Rule is absolutely granted for an Attachment, but upon personal Service of the first Rule; therefore the Words of the Rule always were *super Notitiam hujus Regule sibi dandam*.

When.

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Pleas.

When an Attorney is thus taken on an Attachment, he gives a Bail-Bond to the Sheriff, and at the Return of the Writ personally appears in Court, and then enters into a Recognizance to appear from Day to Day, till the Court shall determine concerning the Matters objected against him. And then upon Motion by his Counsel, the Court makes a Rule, that unless his Adversary exhibits Interrogatories against him in four Days from such Rule, he shall be discharged.

These *Interrogatories* must be filed with the Secondary of that Office where the Cause is, and after such *Attorney* hath been sworn before a Judge to swear the Truth, he is examined by the Secondary, and the Tenor of his Examination is drawn by the Secondary; and thereupon, if the Prothonotary makes a Report that he is in Contempt, the Court commits him to the Fleet; or if he is reported Innocent, they discharge him. If he neglects to appear to be examined, or neglects attending the Court when he is directed to come, the Court will order his Recognizance to be estreated.

And *Note*; if he confesses any Thing material in his Depositions, there is no Cession for Witnesses, but you move on his Confession.

The

The Entry of a Non Pros, after Appearance by the Defendant for want of a Declaration.

Devon. *A. B.* who sued out his Majesty's Writ against *C. D.* late of *Southmolton*, in the County of *Devon*, of a Plea of *Trespass on the Case*, doth not prosecute the same; Therefore it is consider'd by this Court, that he and his Pledges of prosecuting are to be amerced; the Names of the Plaintiff's Pledges are *John Doe*, and *Richard Roe*; and the said *C.* is to be therefrom for ever dismissed. It is also consider'd, that the said *C.* ought to recover against the said *A.* his Damages occasion'd by the Premises, which by the Discretion of the Justices of this Court, according to the Form of the Statute in that Case made and provided, are awarded to the said *C.* at his Request to forty Pounds, for his Expences and Costs sustained by him in defending this Suit, *and so forth.*

A Commitment to the Fleet after Judgment.

And the said (Defendant) shall remain at the Mercy of our Sovereign Lord the King, and be liable to Amercements. Afterwards, (that is to say) on the 23d Day of *January*, in the sixth Year of the Reign of our Sovereign Lord *George the Second*, King of *Great Britain, France and Ireland*, Defender of the Faith, *and so forth*, comes here into this Court in his proper Person; and hereupon the said (Defendant) is committed to his said Majesty's Prison of the Fleet, by reason of the Premises, there to remain till he shall from thence be discharged in due Form of Law.

Another

Common
Pleas.

Another in Discharge of Bail

Afterwards, (that is to say) on the 23d Day of *January*, then next following, the said (Defendant) comes here into this Court in his own proper Person, and as well for his own Indemnity, as in Discharge of his said Bail, he is by this Court committed to his Majesty's Prison of the Fleet, by reason of the said Judgment, there to remain till he shall be from thence discharged in due Form of Law; that they the said Bail may be discharged from their said Recognizance. Whereupon the said *W.* present here in this Court, in his own proper Person, at the Request of the said (Plaintiff) is committed to the said Prison in Execution for the said Debt and Damages, recovered in the Manner as above set forth, there to remain until he shall from thence be discharged in due Form of Law; and the said Bail, (that is to say) *P. S.* and *W. R.* are by this Court entirely discharg'd from their said Recognizance in this Suit.

Of Proceedings by and against Infants.

An Infant is to prosecute a Suit by his Guardian, or best Friend, tho' the Term used is *Prochien Amy*, which is next Friend, but he cannot defend by such next Friend, but must defend only by Guardian, because the Law supposes, that where he demands or sues for any thing, it is for his Benefit. And therefore the Law is not so watchful in that Case of the Person to take care of his Suit, as where he is to be defended, where he may sustain a Loss; for the Law is so careful, lest there should be any Prejudice done to the Infant, that it

will not suffer any Person but a Guardian to defend for him, who may be called to an Account by the Infant, for his Management and Behaviour therein. Common Pleas.

And in this there is this Difference, where an Infant brings an Action in his own Right, and where in the Right and for the Benefit of another; for if he sues in another's Right as Executor or Administrator, it shall never be assign'd for Error, because it is supposed for his Benefit, however that he can have no Loss thereby but if in

that Case Judgment be given against him, he himself may assign his suing by Attorney for Error, because of the personal Prejudice he receives thereby.

Yet if an Infant be join'd with others, in suing in the Right of another, the Action may be brought by Attorney, for they all make but one Person in Law. 3 Cro. 377.

But in all Cases where an Infant is Defendant, tho' it be in another's Right, and tho' join'd with others, he must sue by Guardian.

The Form of an Admission in Court of a next Friend is thus.

London. It is granted here by this Court, that A. B. Gentleman, and C. D. Gentleman, do jointly and severally prosecute, and sue for, and in the Behalf of E. F. who is within Age, as his next Friends, against G. H. of a Plea of Debt, as the Case is.

The

Common
Pleas.

The Form of an Admission by Guardian.

Devon. J. E. who is within the Age of twenty-one Years, is admitted by the Court of our Sovereign Lord the King, before the King himself by T. W. his Guardian, to defend all, and all Manner of Suits, Action and Actions depending in the same Court.

R. Price.

Which is signed by the Judge,

'Tis Time enough to admit such Friend, Guardian or Guardians, any Time before the Declaration delivered, unless it be by special Original ; but it must be before the Declaration delivered, because it must take Notice thereof thus.

Suffolk G. H. late of St. Edmunds-Bury in the County of Suffolk, Woollen-Draper, was to answer to E. T. of a Plea of Trespass on the Case. And whereupon the said E. T. by A. B. (who is admitted by this Court to prosecute for the said E. T. who is within Age) as the next Friend to the said E. T. declares, that whereas,

Admission of an Infant may also be by Commissioners, by Virtue of a *Dedimus* from the Curfitor of the County, and which when returned must be filed with the Curfitor, who makes you a *Mittimus* and Transcript thereof, which you enter on the

Roll ; 'Tis also said he may be admitted by a Judge at the Assizes. Common Pleas.

Which *Dedimus potestatem ut supra*, is for the Commissioners to admit him *custodes* to answer the Plaintiff in the Action brought against him, as in the Declaration ; and the Caption thereupon is to be written on Parchment thus, (*viz.*) By Virtue of his Majesty's Writ hereto annexed, directed to us, and *W. S. H. R.* and *S. A.*

— We whose Names are hereunto subscribed, on the first Day of *December*, in the fifth Year of the Reign of his said present Majesty, have admitted *R. G.* and *H. L.* to be Guardians to the said *T.*, named in the said Writ, (being within Age) to defend a Suit which is now depending in his Majesty's Court of Common Pleas, of a *Plea of Trespass on the Case*, (as it is said) according to the Tenor of the said Writ ; in Testimony of which Matter we have hereunto set our Seals the Day and Year above ; the Execution of which Commission appears in a Schedule hereunto annexed. *Subscribing the Names of those that executed it.*

The *Mittimus* and Transcript must be entered next on the Roll, thus, *Our Sovereign Lord the King sent here to his Justices of the Court of Common Pleas his missionary Writ under Seal, together with the Tenour of a certain Writ of Giving Authority to admit a Guardian : And the Return of the same, and the Admission of the said Guardian thereupon are in these Words following, (that is to say) GEORGE the Second, &c.* so go on to the End of the *Mittimus* and Transcript, quite to the Caption (*ut supra*) with the Commissioners Names.

Common
Pleas.

A Plea by a Guardian runs thus.

And the said *A. B.* by *C. B.* who is admitted by this his said Majesty's Court, to defend for the said *F.* who is within Age, *as his Guardian*, comes and defends the Force and Injury, &c.

Precedents of Writs of Habeas Corpus, Proce- dendo, Certiorari, and Supersedeas.

*A Habeas Corpus to the Sheriffs of
London.*

GEORGE the Second, &c. *To the Mayor, Aldermen and Sheriffs of our City of London, Greeting.* We command you and every of you, that ye have before our Justices at *Westminster*, (*if returnable immediately, then you say*) immediately after the Receipt of this Writ, (*if it be returnable before the Lord Chief Justice, or another of the Judges at his Chambers, you say*) before Sir Robert Eyre, Knight, our Chief Justice, (*or Alexander Denton, Esquire, one of our Justices*) of our Court of Common Pleas, at his Chambers, situate in *Serjeants-Inn, in Chancery-Lane*, the Body of *C. D.* who is said to be detained in our Prison, under your Custody, by whatsoever Name he shall be reputed in the same, together with the Day and Cause of taking and detaining the said *C. D.* to do and receive that

that which our Court shall consider of in this Case. Common
And have you there this Writ. *Witness* Sir Ro-
bert Eyre, Knight, the *Twenty-third* Day of Ja-
nuary, in the *sixth* Year of our Reign. Pleas.

If it be returnable at a general Return,
then you say, As the Return is, *on the*
Octave of the Purification of the Blessed
Virgin Mary, &c.

If it is to be directed to the Judges of
the Marshal's Court, you say,

To the Judges of the Court of our Palace at
Westminster, and every of them, Greeting. We
command you that ye have, &c.

If it be after a *Capi Corpus*, then you say,

GEORGE the Second, &c. to the Sheriff of
Norfolk, Greeting. We command you that you have
before our Justices at *Westminster, on the Octave of*
the Purification of the Blessed Virgin Mary, the Body
of C. D. whom you took by Virtue of our Pre-
cept, and now detain in your Custody, as you
yourself have returned to our Justices at *Westminster,*
on the Octave of Saint Hillary last past, to answer to
A. B. of a Plea that he render to him twenty
Pounds, which he owes to and unjustly detains from
him, (as it is said); and have you there this Writ.
Witness, &c.

A Procedendo to the Judges of the
Marshal's Court.

GEORGE the Second, &c. *To the Judges*
of our Palace Court at Westminster, and every of
them, Greeting. Whereas by our Writ we lately
commanded you, that ye should have before Sir

Common
Pleas.

Robert Eyre, Knight, our Chief Justice of our Court of Common Pleas, at his Chambers, situate in Serjeants-Inn in Chancery-Lane, London, immediately after the Receipt of that Writ, the Body of A. B. who is said to be detained in our Prison, under your Custody, together with the Day and Cause of taking and detaining him, by whatsoever Name the said A. should be reputed in the same, to do and receive, what our said Chief Justice should consider of in that Particular. Nevertheless for certain Reasons specially moving the said Justices of our said Court of Common Pleas at Westminster, in this Particular, we command you and every of you, notwithstanding any Writ lately directed to you to the contrary, that according to the Laws and Customs of our Kingdom of Great Britain, and of your Court, you proceed with Effect in whatsoever Pleas and Complaints are now levied or depending in our Court before you, against the said A. B. Witness Sir Robert Eyre, Knight, &c.

Some of the Forms have been thus, after the Words to do and receive that which our Chief Justice should consider of in this Case; then the Entries have been in this Manner:

Nevertheless because it appeared to our Justices of our said Court of Common Pleas at Westminster that the said A. does not in due Manner prosecute his Writ, to have the Body, together with the Cause of taking and detaining him, at the Day and Place aforesaid. Therefore we command you, that according to the Laws and Customs of Great Britain, and of your Court, you proceed in all and every the Pleas and Complaints levied or depending in our Court, before you and every of you, notwithstanding any Writ lately directed to you, to have the Body in the Manner aforesaid. Witness, &c.

If

Common
Pleas.

If your *Habeas Corpus* was returnable in Court, upon which your *Procedendo* issued, the only Difference is, that you say, *Whereas we lately commanded you that you should have before our Justices at Westminster, (on such a Return) the Body of A. B. who is said to be detained in our Prison, under your Custody, by whatsoever Name he should be reputed in the same, together with the Day and Cause of taking and detaining him, to do and receive that which our said Justices should consider of in that Behalf. Nevertheless for certain Reasons specially moving our said Justices at Westminster in this Particular, (and then as in the former.)*

A Certiorari to the Mayor, Aldermen, and Sheriffs of London.

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of London, Greeting. We being desirous for certain Reasons, that there should be certified, a certain *Plaint*, levied or exhibited before you or some of you, against C. D. late of *Bread-street, London*, at the Suit of A. B. in a Plea of *Trespass on the Case*; therefore we command you, that you send to our Justices at *Westminster*, on the Octave of Saint *Hillary*, the said *Plaint*, together with all Things relating to the same, in as full and ample Manner as the same now remains before you, or either of you, by whatsoever Name the Parties shall be reputed in the same, together with this Writ; so that our said Justices may further cause to be done therein

Common what shall appear to them to be right and just.
 Pleas. Witness Sir Robert Eyre, &c.

If it be to remove an Attachment, then it is thus.

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of the City of London, Greeting. We being desirous for certain Reasons, that there should be certified, as well what original Bills and Complaints are levied or affirmed, before you or any of you, against *Henry Hinde*, Citizen and Turner of your said City, at the Suit of *Thomas Lee*, in an Action of Debt, as also all Attachments made thereon, of the Money, Goods and Chattels of the said *H. Hinde*, in the Hands or Custody of the said *Thomas Lee*, or of any other Person or Persons whatsoever, levied or affirmed before you, or any of you; We command you that you certify the said Complaints and Attachments, with every Thing relating thereto, to our Justices at *Westminster*, on the Morrow of the Purification of the Blessed Virgin Mary, in as full and ample Manner as the same now remains in our Court before you, that our said Justices may cause to be further done therein, that which shall appear to them to be right and just. Witness Sir Robert Eyre, &c.

A Superfedeas on a Habeas Corpus, for that it was clandestinely sued out.

GEORGE the Second, &c. Whereas we lately commanded you by our Writ, that you should have *A. B.* being in our Prison, under your Custody, together with the Day and Cause of taking and detaining him, before our Justices at
West-

Westminster, on the Octave of St. Hillary last past, Common
to do and receive that which our Court should
Pleas.
consider of in that Case. And because it appears
to our Justices at *Westminster*, that the said Writ
to have the Body was sued out clandestinely ;
Therefore we command you, that you alto-
gether forbear molesting the said *A.* by Reason of
the Premises, or in any Manner executing the said
Writ, or returning the same before our Justices at
Westminster. Witness Sir Robert Eyre, &c.

*A Superfedeas because a Capias ad
Satisfaciendum was erroneously sued
out.*

GEORGE the Second, &c. to the Sheriff
of *Middlesex*, Greeting. Whereas we lately com-
manded you by our Writ, that you should take
A. B. late of *Westminster*, in your County, *Hoffer*,
if he should be found in your Bailiwick, and
safely keep him, so that you might have his Body
before our Justices at *Westminster*, within fifteen
Days after the Day of *St. Martin* then to come, to
make Satisfaction to *C. D.* for twenty Pounds, which
in our same Court, before our Justices at *Westmin-*
ster, were awarded to the said *C. D.* for his Damages
which he had sustained, by reason of not per-
forming certain Promises and Undertakings made
by the said *A.* to the said *C.* at *Westminster*, in your
said County whereof he is convicted ; and because
it sufficiently appears to our said Justices, that our
Writ to take his Body to make Satisfaction was un-
duly and erroneously sued out of our said Court ;
therefore we Command you, that you altogether for-
bear taking, or any ways molesting the said *A.* by
reason of the Premises, or in any manner executing
the said Writ, or making a Return thereof to our said

Common
Pleas.

Justices at *Westminster*; and if you shall have taken the said *A.* upon that, and no other Occasion, then Discharge him, and permit him to go at large. Witness Sir Robert Eyre, &c.

A Superfedeas on an Outlawry.

GEORGE the Second, &c. to the Sheriffs of London, Greeting. Whereas we lately commanded you, that you should not omit, by reason of any Liberty in your Countrey, to take *H. Hinde*, late of Breadstreet London, Turner, (outlaw'd in London, on the twenty-second Day of September, in the sixth Year of our Reign, at the Suit of William Martin, in a Plea of Debt) if he was to be found in your Bailiwick, and that you should safely keep him, so that you might have his Body before our Justices at *Westminster*, at a certain Day now past, to do and receive, that which our Court should then and there consider of in that Particular; and because it sufficiently appears to our Justices at *Westminster* of Record, that the said Outlawry, pronounced and obtained against the said *H. Hind*, is altogether Void, and of none Effect in Law; therefore we Command you, that you altogether forbear taking, arresting, imprisoning, or in any wise further molesting the said *H. Hind*, by reason of the said Outlawry; and if upon that and no other Occasion, you have taken and imprisoned the said *H. Hinde*, then permit him to go at large (or discharge him) under the Penalty attending the Neglect thereof. Witness Sir Robert Eyre, &c.

A Super-

Common
Pleas.*A Superfedeas on a Capias, the Defendant having put in Bail.*

GEORGE the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas by our Writ we lately commanded you, that you should take *Thomas Barber*, late of *Westminster* in your County, if he was to be found in your Bailiwick, and safely keep him so, that you might have his Body before our Justices at *Westminster*, at a certain Day then approaching, to answer to *R. Spark*, in an Action of *Trespass on the Case, upon Promises made by the said T. to the said R. at Westminster aforesaid*; and because the said *Thomas* appeared in our Court, before our Justices at *Westminster*, at the Day and Place contained in our said Writ, to answer to the said *R.* according to the Form and Effect thereof; therefore we Command you, that you altogether forbear taking, attaching, imprisoning, or further molesting the said *Thomas* on that Occasion; and if you have taken him on that, and no other Occasion, then without Delay, cause him to be discharged from the Prison in which he is so detained, under the Penalty attending the Neglect thereof. Witness Sir *Robert Eyre*, &c.

I do not think it proper to make a useless Repetition of the Form of a Declaration in Ejectment, there being one in the Proceedings of the King's Bench, which when it is by Original, is the same as in the Common Pleas, and shall therefore here only insert a Translation of the Common Rule in Ejectment, which varies somewhat from that in the King's Bench.

Common
Pleas.

Hillary Term, the Fifth of King George
the Second.

Denn a-
gainst
Fenn, of
one Mes-
suage, one
Barn,
one Stable,
and ten A-
cres of
Land in
the Parish
of Thet-
ford, in
the County
afore said.

Norfolk. It is ordered by the Consent of Robert Martin the Plaintiff's Attorney, and John Cock, Attorney for A. B. who claims a Title to the Tenements in Question, that the said A. B. be admitted Defendant, and that the said A. shall immediately appear by his said Attorney, who shall receive a Declaration, and plead thereto the General Issue this Term; and that the said A. at the Trial thereupon to be had, shall appear in his proper Person, either by his Counsel or Attorney, and acknowledge Lease, Entry, and actual Ouster, of such of the Tenements specified in the said Declaration, as are in the Possession of the said Defendant, or his Under Tenant, or any Person claiming by, or under his Title thereto, or that in Default thereof, Judgment shall be entred against the said Defendant as the casual Ejection; but the Proceedings to stay against him until there be a Default in some of the Premises; and by the like Consent it is order'd, that if by Reason of such Default the Plaintiff becomes nonsuited upon the Trial, the said A. shall take no Advantage thereof, but shall pay Costs for the same to the said Plaintiff, to be taxed by the Prothonotary. And it is further ordered, that the Lessor of the Plaintiff be chargeable with the Payment of such Costs, as shall be allowed and awarded by this Court to the said A. in any manner howsoever.

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A Postea for the Plaintiff on a Record tried, either at the Sitzings in London or Middlesex, where Part is found for the Plaintiff, and Part for the Defendant.

Afterwards, (that is to say) on the Day, and at the Place within contained, came as well the within named A. B. as the within written C. D. by their Attornies within mentioned, before Robert Lord Raymond, the Chief Justice within written, and John Smith, Gent. (he being associated to the said Chief Justice by Force of the Statute in that Case made and provided) and the Jurors of the Jury, whereof Mention is made in the within written Record, being summon'd likewise came, and being ballotted, tried, and sworn to declare the Truth of the Issue within contained, as to the third Promise and Undertaking mentioned in the within Declaration, declare upon their Oath, that the said C. D. did undertake in such Manner and Form as the said A. B. hath within declared against him, and do assess the Damages of the said A. occasioned by not performing the said third Promise and Undertaking, besides his Expences and Costs, laid out by him, about his Suit in this Particular to fifty Pounds, and for his Expences and Costs to forty Shillings; and as to the first, second, and fourth Promises and Undertakings, in the within written Declaration mentioned, the said Jurors further declare upon their Oath, that the said D. did not undertake in such Manner and Form, as the said A. hath within declared against him, therefore it is considered by the Court of our said Sovereign Lord the King, here before the King him-

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self, that the said *A. B.* should recover against the said *C. D.* the said Damages assessed by the said Jury in the Manner as above; and also fourteen Pounds for his Damages and Costs awarded by this Court of our said Sovereign Lord the King to the said *A.* with his Consent by way of Increase, which said Damages, Expences and Costs, amount in the Whole to sixty-four Pounds, and the said *C.* shall remain at the Mercy of our Sovereign Lord the King liable to be amerced. It is also consider'd, that the said *A.* as to the said first, second, and fourth Promises, should be at the Mercy of our Sovereign Lord the King, and liable to be amerced for his false Claim thereof against the said *C.* and the said *C.* as to the said first, second, and fourth Promises is thereof acquitted, and thereof dismissed the Court.

*If the Postea be on a Trial at the Assizes,
then this is the proper Entry.*

Afterwards, (that is to say) on the Day, and at the Place within contained, as well the within named *A. B.* as the within written *C. D.* by their Attornies within contained, came before Sir *Robert Eyre*, Knt. his Majesty's Chief Justice of his Court of Common Pleas, and *Roger Jennyns*, Esq; (*associated for this particular Purpose*) to the said Sir *Robert Eyre*, and *Alexander Denton*, Esq; another of his Majesty's Justices of his said Court of Common Pleas, appointed to hold the Assizes in the County of *Norfolk*, by Virtue of his Majesty's Writ, directing the Assizes to be held before any two of the Persons therein named, if all therein should not come there, (the Presence of the said *Alexander Denton* not being expected) and the Jury being summoned and ballotted, according to the Form of the Statute in such Case made and provided,

provided, and tried and sworn to declare the Truth of what is within contained, declare upon their Oath, that the *Writing Obligatory* in the Plaintiff's Declaration within mentioned, is the Deed of the said C. as the said A. hath within declared against him, and they assess the Damages of the said A. on that Occasion, besides his Expences and Costs by him laid out about his Suit in this Cause, to one Shilling, and for his Expences and Costs, to fifty-three Shillings and four Pence. *Therefore it is consider'd*, that the said A. should recover against the said C. D. his said Debt, and the Damages assessed by the said Jury by reason of detaining the same, and fourteen Pounds for his Expences and Costs awarded by this Court to the said A. with his Consent, by way of *Increase*; which said Damages in the Whole, amount to sixteen Pounds fourteen Shillings and four Pence, and the said C. shall therefore remain at the Mercy of our Sovereign Lord the King, liable to be amerced.

If before the *Act of Parliament* of the Third of his present Majesty's Reign, for regulating *Juries*, there were not *Jurors* enough appeared of the Persons that were mentioned in the Panel annexed to the *Habeas Corpora* or *Distingas*, then that deficient Number, which was usually called a *Tales*, (that is) Persons that are so far such, as are in the Panel, that they were to be of that County, and qualified with all the necessary Requisites; as that they were to be in no wise related, either to the Plaintiff or Defendant, (and who had ten Pounds a Year in Lands, Tenements or Rents) were before the said late Act granted by the Court to be taken *de Circumstantibus*, (that is) of Persons standing by, and attending about the Court, and to be impanelled with the rest that did appear; but by that Act, the Jury now are to be taken out of forty-eight, so that there is not likely to be any *tales de Circumstantibus*,

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Circumstantibus, as was usual before; therefore as that is the Case, and as we have a Maxim in the Law, *cessanti Causa cessat effectus*, the Fee of two Shillings, which the Marshal, Sheriff and Cryer, used to take for such *Tales*, is now abolished; yet I do not apprehend, that the Act has totally taken away from the Court the Power of granting a *Tales*; but should it ever happen to be the Case, by reason of any Sickness or otherwise, that twelve Jurors should not come out of the forty-eight, or by reason of Challenges, they should be reduc'd to a deficient Number, in that Case the Court I believe may yet grant a *Tales*; and wherever that is the Case, I submit this Entry to the Consideration of the Practisers.

In the Postea of a Record tried in London or Middlesex, after the Words according to the Form of the Statute in that Case made and provided, and in a Postea of a Record tried at the Assizes, after the Words the Presence of the said Alexander Denton not being expected, you must go on thus; and the Jurors of the said Jury being summoned, some of them, (that is to say) E. F. G. H. so recite as many of the Jurors of the said Jury as appeared, came, and being ballotted, according to the Form of the Statute in that Case made and provided, are sworn upon the Jury; and because the rest of the said Jurors have not appeared, therefore others of the Persons standing by the Court, are at the Request of the Plaintiff, and by the Command of the said Justice, elected by the Sheriff of the said County, and newly added, the Names of which are affixed in the Panel underwritten, according to the Form of the Statute in such Case made and provided; which said Jury newly added, (that is to say) I. K. L. M. N. O. (reciting the rest that were added to the Former, to make up the Number twelve) likewise came, who being elected, tried and sworn, together

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ther with the said other Jurors, before balloted, impanelled and sworn to declare the Truth of what is within contained, say upon their Oath, &c. as the Verdict is.

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And I submit it, whether as this Act appoints a Number not less than 48, or more than 72 to be returned on every *Venire*; whether the Form of the *Venire*, as well as the Award thereof should not now be altered to make them consonant to the Nature of the Thing intended by them; and therefore whether the *Venire* should not now be thus:

We command you that you cause to come before us at *Westminster*, on *Thursday next after three Weeks from the Holy Trinity*, a Number, and not less than 48, or exceeding 72, of free and lawful Men of the Body of your County; out of which twelve may be balloted, according to the Form of the Statute in such Case made and provided, every one of which to have ten Pounds a Year in Lands, Tenements, or Rents, at least. And then go on as in the *Venire* herein before inserted, and the Award to be thus:

Therefore let a Number not less than 48, or exceeding 72, of Persons of the said Court, come before our Sovereign Lord the King, at *Westminster*, (on the Day of the Return of the *Venire*) out of which twelve may be balloted to make a *Jury* thereof, between the said Parties, according to the Form of the Statute in that Case made and provided, and who are in no wise related, &c. As in the Award of a *Venire* herein before inserted.

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And the *Distingas* to be altered, *Mutatis
mutandis.*

If there is a View before the Trial, according to the Form of the Statute of the 4th and 5th of Queen Anne, I submit whether this following Entry will not be thought proper for that Purpose, now the Method of impanelling Juries is altered.

The Form of a Distringas for a View before a Trial.

GEORGE the Second, &c. to the Sheriff of Norfolk, Greeting. We command you, that you distrain the several Persons mentioned in the Panel hereunto annexed, Jurors summoned into our Court before us, between A. B. Plaintiff, and C. D. Defendant, by all their Lands and Chattels in your Bailiwick; so that neither they or either of them, or any other Person for them, meddle therewith until you have another Precept therein from us; and that you answer for the Issues of the same to us, so that you have their Bodies before us at Westminster, on Wednesday next after fifteen Days from the Feast-Day of Easter, or before our Justices appointed to hold the Assizes in your County, if they should come there before, (that is to say) on Wednesday the Twenty-first Day of March, at Thetford in your County, by Force of the Statute in that Case made and provided; out of which a Jury of the County may be balloted for, and made between the said Parties, in an Action of *Trespass upon the Case*, and to hear their Judgment for their many Defaults. And in the mean Time, according to the Form of the Statute in such Case made and provided.

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vided, six of the Persons named in the said Panel here-
to annexed, (that is to say) *A. B. C. D. E. F. G. H. I. K. L. M.* being agreed on by the said Parties to
view the Place in Question, (*If the Viewers are not a-
greed to by the Parties, but appointed by the Master,
which I understand to be the proper Officer meant by the
said Act for that Purpose*) then say thus, Being appointed
by the Court to view the Place in Question. *If
they are appointed by the Judge who is to go that
Circuit, which the Act says may be done if need be,
the Necessity of which may arise in this Manner: If
either of the Parties alledges to the Master that which
he thinks not a sufficient Reason for his Refusing such
Person or Persons to be Viewers, then by a Summons
before a Judge, if the Judge on an Attendance for that
Purpose conceives, that the Reasons offered against such
Viewers were good, he is impowered by this Act to
name the Viewers, and then you must say, Being ap-
pointed by Alexander Denton, one of our Justices of
the Court of Common Pleas, according to the Form
of the Statute in that Case made and provided.
Therefore we command you, that you have
those six Persons so agreed on, (or appointed as the
Case is) at the Place in Question, upon the 8th
Day of March next, who shall there view the said
Place in the Presence of *J. M.* on the Part of the
Plaintiff, and *W. F.* on the Part of the Defendant,
appointed by our Court before us, to shew the said
Place to the said Viewers; and in what Manner
you shall have executed this our Precept; do you
signify by a Return thereof to our said Justices, at the
said Assizes, remitting to us this our Writ. Wit-
ness Robert, Lord Raymond, &c.*

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The Entry of which is as follows :

And the said C. D. by *Henry Cruwys his Attorney*, comes and defends the Force, Injury and Damages, and whatsoever else he ought to defend, where and when the Court will consider thereof; and saith he is not guilty of the Trespass above laid to his Charge, in such Manner and Form, as the said A. hath above declared against him; and of this he puts himself upon his Country; and the said A. does likewise the same. Therefore let a Number not less than Forty-eight, nor exceeding Seventy-two, of free and lawful Men of the Body of your said County, come before our Sovereign Lord the King at *Westminster*, on (*the Day of the Return of the Venire*) out of which twelve may be ballotted to make a Jury thereof between the said Parties, according to the Form of the Statute in such Case made and provided; and who neither, *and so forth*, To recognize, *and so forth*, Because as well, *and so forth*. The same Day is given to the said Parties to be there, *and so forth*. At which Day came the said Parties before our Sovereign Lord the King, at *Westminster*, by their said Attornies, and the said Sheriff of the County of *Norfolk*, (that is to say) *J. S. Esq;* returned the Writ, *to cause the said Jury to appear* in all Things served and executed, together with a Panel of the Names of Jurors, summoned according to the Form of the Statute in that Case made and provided, annexed to the said Writ, of which none, *and so forth*. Therefore the Sheriff of the said County is commanded, that he restrain the several Persons mentioned in the Panel to a Writ directed to him for that Purpose, by all their Lands, *and so forth*. And that of the Issues, *and so forth*. That he may have their Bodies before our Sovereign Lord the King, at *Westminster*, on *Wednesday*

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Wednesday next after three Weeks from the Feast-Day of Easter, out of which a Jury of the County may be balloted, and made between the said Parties in the said Action, according to the Form of the Statute in such Case made and provided. And in the mean Time, according to the Form of the Statute in such Case made and provided, the said Sheriff is also commanded, that he cause six of the Persons named in the said Writ, (whereby he was commanded to cause the said Forty-eight Persons to come before our Sovereign Lord the King at *Westminster*, at the Day of the Return of the said Writ) that is to say, *A. B. C. D. E. F. G. H. I. K. and L. M.* agreed on by the said Parties to view the Place in Question, upon the eighth Day of *March* last past, who should there view the said Place in Question, in the Presence of *J. M. and W. F.* appointed by this Court of our said Sovereign Lord the King, to shew the Place to the said Jurors; and that in what Manner he should execute that Writ, he should signify to our said Sovereign Lord the King by a proper Return thereof. The same Day is given to the said Parties to be there, *and so forth.* At which Day came the said Parties by their said Attornies, before our said Sovereign Lord the King, and the Sheriff of the said County made a Return, That by Virtue of the said Writ, he had caused the said six Jurors named in the said Writ, to view the said Place in Question, then and there shewed to them by the said *J. M. and W. F.* as by the said Writ he was directed to do, according to the Tenour of the same. And that the remaining Part of the Execution of the said Writ appear'd in the Panel annexed to the said Writ. And thereupon the Jurors of the said Jury, that is to say, the said *A. B. C. D. &c.* being summoned, came, and are impanelled and sworn upon the Jury, to try the Cause between the said Parties, and others, (that is

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to say) *N. O. P. Q. R. S. W. H. B. M.* and
C. A. named in the Panel of the said Writ, by
which the Sheriff was commanded to destrain the
Jurors, being ballotted, according to the Form
of the Statute in that Case made and provided
whose Names are contained in the Panel hereunder
written, are impanelled and sworn, who (together
with the said other six before impanelled and sworn
to declare the Truth of the within Contents, de-
clare upon their Oaths, &c.

E. J. n. J.

11/20/16

F I N I S.
